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

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD45

The Official Advertising Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising the requirements for use of the official insurance sign and official advertising statement to permit insured credit unions to use the basic form of the official advertising statement, a shortened form, or the official sign in advertisements. The rule will give credit unions added flexibility in advertisements by allowing them to use the shortened form or the official insurance sign in advertisements as alternatives to the basic official advertising statement.

DATES: This rule is effective October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Moisette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or *telephone:* (703) 518–6540.

SUPPLEMENTARY INFORMATION: In April 2008, NCUA proposed an amendment revising the requirements for use of the official insurance sign and official advertising statement to permit insured credit unions to use the basic form of the official advertising statement, a shortened form, or the official sign in advertisements. 73 FR 22839 (April 28, 2008). Additionally, the proposed amendment clarified the font of the text in the official sign may be altered to ensure it is legible when it is used as the official advertising statement. The proposal resulted from NCUA's 2007 regulatory review, and was identified to provide insured credit unions greater flexibility in how they meet the requirement of giving notice of their insured status.

The Federal Credit Union Act (Act) requires insured credit unions to display signs at their places of business indicating accounts are insured and also to include in all advertisements a statement to the effect that accounts are insured. 12 U.S.C. 1785(a). The Act authorizes the NCUA Board to promulgate regulations governing the substance of the official insurance sign and the manner it is displayed or used and, also, to address the practicality of including the official statement on insured status in advertisements. *Id.* NCUA implements this authority in part 740 of its regulations and, in § 740.5, NCUA requires insured credit unions to include the official advertising statement in all advertisements, including on their main internet pages, with certain exceptions.

NCUA received a total of eight comments on the proposed rule from credit unions and trade associations. All the commenters supported the rule. On September 10, 2008, NCUA received notice that one comment letter submitted via the Federal eRulemaking Portal regarding this rulemaking had not been forwarded to NCUA. This was due to a minor software problem that has been corrected.[1] The comment period for this rule closed on June 27, 2008. As noted above, all eight comment letters NCUA received fully supported the amendments and the Board believes, given the identity of these commenters, which includes major credit union trade associations and individual credit unions, that these comment letters broadly and fairly represent the views of interested parties.

The Board believes it is appropriate and fair in these circumstances to proceed with the final rule rather than delay implementation. This rule creates no burden for FCUs, but merely provides an alternative for insured credit unions to meet the advertising requirement regarding the existence of federal account insurance. For these reasons, the Board concludes there is no need to reopen the comment period and the interest of the public and FCUs is served by proceeding with the final rule.

One commenter suggested NCUA further condense the advertising statement and permit credit unions to use a brief statement such as, ''NCUA Insured'' or ''Insured by NCUA.'' Credit unions may use the shortened version of the official advertising statement, which is ''Federally insured by NCUA.'' Keeping the word ''federally'' in the shortened version ensures those who may not be familiar with credit unions, NCUA, or the National Credit Union Share Insurance Fund receive notice that member shares are backed by the full faith and credit of the United States government, especially when the shortened statement is used alone.

Accordingly, NCUA adopts the proposed rule, published at 73 FR 22839 (April 28, 2008), as a final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (those under $10 million in assets). The final amendment merely expands the options credit unions have to comply with the requirement to notify members and the public of their insured status in advertisements. Accordingly, the NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an

[1] The interagency ''eRulemaking Program'' launched the Web site *http://www.regulations.gov* in January 2003 to provide access and an opportunity to comment on all proposed federal regulations at one online portal. NCUA's understanding is that the software problem has been corrected and safeguards are now in place to ensure this error will not occur for future proposed rules. Questions about this matter may be directed to John Moses, Chief, eRulemaking Program Branch, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202/566–1352, *Moses.John@epamail.epa.gov.*

office within OMB, has determined that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

The final rule does not contain a ''collection of information'' within the meaning of section 3502(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3502(3), and would not increase paperwork requirements under the Paperwork Reduction Act of 1995 or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on September 25, 2008.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 740 as follows:

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

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

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

■ 2. Amend § 740.5 by revising paragraph (b) to read as follows:

§ 740.5 Requirements for the official advertising statement.

* * * * *

(b) The official advertising statement is in substance as follows: ''This credit union is federally insured by the National Credit Union Administration.'' Insured credit unions, at their option, may use the short title ''Federally insured by NCUA'' or a reproduction of the official sign, as described in § 740.4(b), as the official advertising statement. The official advertising statement must be in a size and print that is clearly legible. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility as provided in § 740.4(b)(2).

* * * * *

[FR Doc. E8–23071 Filed 9–30–08; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

RIN 3133–AD44

Revisions for the Freedom of Information Act and Privacy Act Regulations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its Freedom of Information Act (FOIA) and Privacy Act regulations. The final rule reflects recent amendments to the FOIA addressing fee practices, time limits for complying with requests, and new reporting requirements. The changes to the Privacy Act provisions reflect the agency's efforts to clarify the procedures whereby individuals may obtain notification of whether an NCUA system of records contains information about the individual and how to access or amend a record.

DATES: This rule is effective October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Linda K. Dent, Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 2008, the NCUA Board requested comment on a proposed rule to update and clarify the procedures for requesting access to agency records and other rights and requirements under the FOIA and Privacy Act provisions of part 792. 73 FR 22,289 (April 25, 2008). In addition to incorporating the 2007 FOIA amendments into the rule, the proposed rule added definitions, revised terminology and otherwise clarified provisions implementing the Privacy Act. Technical corrections also were made to both sections.

Discussion

NCUA's policy is to review a third of its regulations periodically to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. The proposed changes were the result of such a review. The changes also coincided with recent statutory amendments to FOIA and NCUA's updating of its Systems of Records Notice under the Privacy Act, periodically published in the **Federal Register**.

Summary of Comments

The NCUA Board received two comments in general support of the proposed rule. In response to proposed language clarifying when a FOIA request is considered received, one commenter urged the agency to make reasonable efforts to promptly notify a requester when a request is incorrectly addressed or otherwise deficient; forward incorrectly addressed requests to the proper Information Center; or if possible, disregard deficiencies having no impact on the ability to process the response. The amended language simply explains what conditions must be met to start the clock for the statutory processing period. As a general practice, Information Center staff communicates with requesters to obtain missing information and to clarify requests to enable their timely processing. Similarly, FOIA requests sent to the wrong Information Center are forwarded to the correct Information Center.

The commenter also suggested a deceased individual's records should receive protection consistent with that of a living individual and suggested the agency require a requester to obtain approval from the decedent's estate before releasing any records. As explained in the Department of Justice's 2007 FOIA Guide, there is a ''longstanding FOIA rule that death extinguishes one's privacy rights.'' USDOJ: OIP: *Freedom of Information Act Guide,* March 2007, page 566. Whether records pertaining to a deceased individual are actually released requires an evaluation of the privacy interests at issue in such a release, which may include surviving family members' right to personal privacy.

The other commenter questioned eliminating the ability to submit Privacy Act requests for records via telephone, believing the agency should facilitate all forms of electronic requests irrespective of how made. The proposed change does not eliminate a requester's ability to submit requests by facsimile or e-mail. The Board has added clarifying language to the procedures and requirements provisions to reflect this fact.

Regulatory Procedures

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has determined the final rule does not contain a collection of information subject to the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This final rule does not impose any requirements on federally-insured credit unions. Therefore, it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Freedom of Information, Information, Privacy, Records, System of records.

By the National Credit Union Administration Board on September 25, 2008.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 792 as set forth below:

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

■ 1. The authority citation for part 792 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

■ 2. In § 792.03, revise the fourth sentence of the introductory text and the last sentence of paragraph (c) to read as follows:

§ 792.03 How will I know which records to request?

* * * You may obtain copies of indices by making a request to the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–2387, *Attn:* FOIA Officer or as indicated on the NCUA Web site at *www.ncua.gov*. * * *

* * * * *

(c) * * * The Popular FOIA Index is available on the NCUA web site.

■ 3. In § 792.04, revise paragraph (a) to read as follows:

§ 792.04 How can I obtain these records?

* * * * *

(a) You may obtain copies of the records referenced in § 792.02 by obtaining the index referred to in § 792.03 and following the ordering instructions it contains, or by making a written request to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428, *Attn:* FOIA Officer or as indicated on the NCUA Web site.

* * * * *

■ 4. In § 792.07, revise the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 792.07 Where do I send my request?

(a) You must send your written request to one of NCUA's Information Centers. * * *

(b) If you are seeking any NCUA record, other than those maintained by the Office of Inspector General, you should send your request to NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428, *Attn:* FOIA Officer or as indicated on the NCUA Web site at *http://www.ncua.gov*.

* * * * *

■ 5. In § 792.08, revise the introductory text and paragraph (a) to read as follows:

§ 792.08 What must I include in my request?

Until an Information Center receives your FOIA request, it is not obligated to search for responsive records, meet time deadlines, or release any records. A request will not be considered received if it does not include all of the items in paragraphs (a) through (c) of this section.

(a) Your request must be in writing and include the words ''FOIA REQUEST'' on both the envelope and request letter. The request letter must also include your name, address and a telephone number where you can be reached during normal business hours. If you would like us to respond to your FOIA request by electronic mail (e-mail), you should include your e-mail address.

* * * * *

■ 6. In § 792.10, revise the second sentence of paragraph (a), the last sentence of paragraph (b) and the second sentence of paragraph (e) to read as follows:

§ 792.10 What will NCUA do with my request?

(a)* * * The date of receipt for any request, including one that is addressed incorrectly or is forwarded to NCUA by another agency, is the earlier of the date the appropriate Information Center actually receives the request or 10 working days after either of NCUA's Information Centers receives the request.

(b) * * * All other requests will be handled under normal processing procedures in the order they were received.

* * * * *

(e) * * * If we notify you of a denial of your request, we will include the reason for the denial.

* * * * *

■ 7. In § 792.11, revise paragraph (a)(6) introductory text by removing the first

sentence and adding three sentences in its place to read as follows:

§ 792.11 What kind of records are exempt from public disclosure?

(a) * * *

(6) Personnel, medical, and similar files (including financial files) pertaining to another person, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy without the subject person's written consent or proof of death. Written consent consists of a written statement by the subject person, authorizing the release of the information to you, and including either the subject person's notarized signature or a declaration made under penalty of perjury that the statement is true and correct. Proof of death consists of evidence that the subject of your request is deceased—such as a death certificate, a newspaper obituary, or some comparable proof of death. * * *

* * * * *

■ 8. In § 792.15, revise paragraph (a) to read as follows:

§ 792.15 How long will it take to process my request?

* * * * *

(a)(1) Where the running of such time is suspended while:

(i) The Information Center awaits additional information from the requester. A suspension of time for this purpose may occur only once during the processing period; and

(ii) The Information Center clarifies with the requester issues regarding the payment of fees pursuant to § 792.26.

(2) The Information Center's receipt of the requester's response to the request for additional information or clarification ends the tolling period;

* * * * *

■ 9. Revise § 792.17 to read as follows:

§ 792.17 What can I do if the time limit passes and I still have not received a response?

If NCUA does not comply with the time limits under § 792.15, or as extended under § 792.16, you do not have to pay search fees; requesters qualifying for free search fees will not have to pay duplication fees. You also can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. If NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court may consider your refusal to modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

■ 10. In § 792.18, revise the first sentence of paragraph (b) to read as follows:

§ 792.18 What if my request is urgent and I cannot wait for the records?

* * * * *

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten working days of receipt of the request. * * *

* * * * *

■ 11. In § 792.19, revise paragraph (c)(1) to read as follows:

§ 792.19 How does NCUA calculate the fees for processing my request?

* * * * *

(c) * * *

(1) The per-page fee for paper copy reproduction of a document is $.10;

* * * * *

■ 12. In § 792.27, revise paragraphs (a)(1) through (a)(4) to read as follows:

§ 792.27 Can fees be reduced or waived?

* * * * *

(a) * * *

(1) Whether the subject of the requested records concerns identifiable operations or activities of the government, with a connection that is direct and clear;

(2) Whether the disclosable portions of the requested records are meaningfully informative about government operations and activities in order to be likely to contribute to an understanding of government operations or activities. Information already in the public domain, either in a duplicate or substantially identical form where nothing new would be added to the public's understanding, would not be meaningfully informative;

(3) Whether disclosure of the requested information will contribute to public understanding, meaning a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. Representatives of the news media are presumed to satisfy this consideration; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The level of public understanding before disclosure must be enhanced by the disclosure to a significant extent.

* * * * *

■ 13. In § 792.28, revise the first and third sentences of paragraph (a), and paragraph (c), to read as follows:

§ 792.28 What if I am not satisfied with the response I receive?

* * * * *

(a) Make a determination with respect to any appeal within 20 working days after the receipt of such appeal. * * * Where you do not address your appeal to the General Counsel, the time limitations stated above will be computed from the date of receipt of the appeal by the General Counsel.

* * * * *

(c) Address your appeal to NCUA, Office of General Counsel—FOIA APPEAL, 1775 Duke Street, Alexandria, VA 22314–3428. The words ''FOIA APPEAL'' should appear on the envelope and in the letter. Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

Subpart E—[Amended]

■ 14. Amend subpart E by removing the term ''NCUA official'' wherever it appears and adding in its place the term ''system manager.''

■ 15. In § 792.53, add new paragraphs (g), (h) and (i) to read as follows:

§ 792.53 Definitions.

* * * * *

(g) *Notice of Systems of Records* means the annual notice published by NCUA in the **Federal Register** informing the public of the existence and character of the systems of records it maintains. The Notice of Systems of Records also is available on NCUA's Web site at *http://www.ncua.gov*.

(h) *System manager* means the NCUA official responsible for the maintenance, collection, use or distribution of information contained in a system of records. The system manager for each system of records is provided in the **Federal Register** publication of NCUA's annual systems of records notice.

(i) *Working day* means Monday through Friday excluding legal public holidays.

■ 16. Revise § 792.54 to read as follows:

§ 792.54 Procedures for requests pertaining to individual records in a system of records.

(a) Individuals desiring to know if a system of records contains records pertaining to them, and individuals requesting access to records in a system of records pertaining to them should submit a written request to the appropriate system manager as identified in the Notice of Systems of Records. An individual who does not have access to the **Federal Register** and who is unable to determine the appropriate system manager to whom to submit a request may submit a request to the Privacy Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, in which case the request will be referred to the appropriate system manager.

(b) Individuals requesting notification of, or access to, records should include the words ''PRIVACY ACT REQUEST'' on both the letter and, as appropriate, the envelope, cover document or subject line; describe the record sought; the approximate dates covered by the record; and, the systems of record in which records are thought to be included. Individuals must also meet the identification requirements in § 792.55.

■ 17. In § 792.55, revise paragraphs (a)(1) through (a)(3) and (c) to read as follows:

§ 792.55 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) * * *

(1) Individuals appearing in person, if not personally known to the system manager responding to the request, must present a single document bearing a photograph (such as a passport or identification badge) or two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or voter registration card);

(2) Individuals submitting requests by mail or written electronic form, such as facsimile or e-mail, may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If inadequate identifying information is provided, the system manager responding to the request may require further identifying information before any notification or responsive disclosure.

(3) Individuals appearing in person or submitting requests by mail or written electronic form, who cannot provide the required documentation or identification, may provide an unsworn declaration subscribed to as true under penalty of perjury.

* * * * *

(c) A record may be disclosed to a representative of an individual to whom the record pertains provided the system manager receives written authorization from the individual who is the subject of the record.

* * * * *

■ 18. In § 792.57, revise paragraph (b) to read as follows:

§ 792.57 Special procedures: Information furnished by other agencies; medical records.

* * * * *

(b) Medical records may be disclosed on request to the individuals to whom they pertain unless disclosing the medical information directly to the requesting individual could have an adverse effect on the individual. Where medical information is potentially adverse to the requesting individual, the system manager responsible may advise the requesting individual that the medical records will be transmitted only to a physician designated in writing by the individual.

■ 19. In § 792.58, revise paragraph (a) and the second sentence of paragraph (b) to read as follows:

§ 792.58 Requests for correction or amendment to a record; administrative review of requests.

(a) An individual may request amendment of a record concerning that individual by submitting a written request, either in person or by mail, to the system manager identified in the Notice of Systems of Records. The words ''PRIVACY ACT—REQUEST TO AMEND RECORD'' should be written on the letter and the envelope. The request must describe the system of records containing the record sought to be amended, indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. An individual who does not have access to NCUA's Notice of Systems of Records, and to whom the appropriate address is otherwise unavailable, may submit a request to the Privacy Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, in which case the request will then be referred to the appropriate system manager. The date of receipt of the request will be determined as of the date of receipt by the system manager.

(b) * * * The appropriate system manager will promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record will be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.59 for the individual to request a review of that rejection.

■ 20. In § 792.59, revise the third sentence of paragraph (a) and the first two sentences of paragraph (c) to read as follows:

§ 792.59 Appeal of initial determination.

(a) * * * Appeals must be addressed to the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 with the words ''PRIVACY ACT—APPEAL'' written on the letter and the envelope.* * *

* * * * *

(c) If an appeal under this section is denied in whole or in part, an individual may file a statement of disagreement concisely stating the reason(s) for disagreeing with the denial for amendment or correction, and clearly identifying each part of any record that is disputed. The statement must be sent within 30 working days of the date of receipt of the notice of General Counsel's refusal to authorize amendment or correction, to the General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.* * *

* * * * *

■ 21. In § 792.60, revise paragraph (j) to read as follows:

§ 792.60 Disclosure of record to person other than the individual to whom it pertains.

* * * * *

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

* * * * *

■ 22. In § 792.61, revise the first sentence of paragraph (a) to read as follows:

§ 792.61 Accounting for disclosures.

(a) Each system manager identified in the ''Notice of Systems of Records'' must establish a system of accounting for all disclosures of information or records under the Privacy Act made outside NCUA.* * *

* * * * *

■ 23. In § 792.63, revise paragraphs (a), (b)(1), and (b)(4), to read as follows:

§ 792.63 Collection of information from individuals: information forms.

(a) The system manager for each system of records is responsible for reviewing all forms developed and used to collect information from or about individuals for incorporation into the system of records.

(b) * * *

(1) To ensure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of any authorized law enforcement activity;

* * * * *

(4) To ensure that the form or accompanying statement clearly indicates to the individual the effects on him or her, if any, of refusing to provide some or all of the requested information; and

* * * * *

■ 24. In § 792.66, revise paragraphs (a) and (b)(2), add four new sentences to the end of paragraph (b)(3), and add four new sentences to the end of paragraph (b)(4) to read as follows:

§ 792.66 Exemptions.

(a) NCUA maintains several systems of records that are exempted from some provisions of the Privacy Act. The system number and name, description of records contained in the system, exempted provisions and reasons for exemption are as follows:

(b) * * *

(2) System NCUA–8, entitled, ''Investigative Reports Involving Any Crime or Suspicious Activity Against a Credit Union, NCUA,'' consists of investigatory or enforcement records about individuals suspected of involvement in violations of laws or regulations, whether criminal or administrative. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a (k)(2)), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). The records in this system are also exempted pursuant to section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (f), and (g). Where possible, information that would identify a confidential source will be extracted or summarized in a manner that protects the source and the summary or extract will be provided to the requesting individual.

(3) * * * NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information which would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

(4) * * * NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, and NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA will advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, if review of the record reveals that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under federal law, the individuals will be advised of the existence of the information and will be provided the information, except to the extent disclosure would identify a confidential source. Where possible, information that would identify a confidential source will be extracted or summarized in a manner which protects the source and the summary or extract will be provided to the requesting individual.

* * * * *

■ 25. In § 792.69, revise paragraph (a) to read as follows:

§ 792.69 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Office of Human Resources, with advice from the Senior Privacy Act Officer, is responsible for training NCUA employees in the obligations imposed by the Privacy Act and this subpart.

* * * * *

[FR Doc. E8–23076 Filed 9–30–08; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127, and 134

RIN 3245–AF40

The Women-Owned Small Business Federal Contract Assistance Procedures

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Small Business Administration (SBA) regulations governing small business contracting programs to set forth procedures that will govern the new Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures as authorized in the Small Business Act.

DATES: *Effective Date:* This rule is effective October 31, 2008.

Applicability Date: This final rule will be effective 30 days after publication. This final rule does not identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal procurement because SBA is awaiting comments on its proposed rule before concluding its eligibility determinations. SBA's determination of the industries in which WOSBs are underrepresented or substantially underrepresented in Federal procurement will be effective not less than 30 days after its publication date.

FOR FURTHER INFORMATION CONTACT: Linda Korbol, Assistant Administrator for Women's Procurement, Office of Government Contracting, (202) 205–7341 or *Linda.Korbol@sba.gov.*

SUPPLEMENTARY INFORMATION: On December 27, 2007, SBA proposed to amend its regulations in the **Federal Register**, 72 FR 73285, with a request for comments to implement the WOSB Federal Contract Assistance Procedures

(Procedures). These Procedures are authorized under Section 811 of the Small Business Reauthorization Act of 2000, Public Law 106–554, which is codified at Section 8(m) of the Small Business Act (Act), 15 U.S.C. 637(m).

The proposed rule concerned procedures to increase Federal procurement opportunities for WOSBs. More specifically, the proposed rule contained provisions that would authorize contracting officers to restrict competition to eligible WOSBs for Federal contracts not exceeding $3 million ($5 million for manufacturing) in those industries in which WOSBs are underrepresented or substantially underrepresented and in which the procuring agency has determined that the set-aside would satisfy constitutional requirements. The proposed rule also set forth the standards for determining the eligibility of a concern as a WOSB or EDWOSB and required any firm receiving a contract under these procedures to certify its status as a ''small business concern owned and controlled by women'' as defined in § 3(n) of the Small Business Act, 15 U.S.C. 632(n). In addition, the proposed rule identified the industries in which WOSBs were determined to be underrepresented and substantially underrepresented in Federal contracting. The proposed rule also established standards for eligibility examinations and protest procedures, as well as the penalties that can be imposed for a concern's misrepresentation of its status as an EDWOSB or WOSB. Lastly, the rule proposed the relevant conforming amendments to SBA's current procurement and appeal procedure regulations.

Discussion of Comments on the Proposed Rule

The comment period for the Proposed Rule closed on March 31, 2008. SBA received approximately 1,720 comments. These comments are available to the public for viewing at *http://www.regulations.gov.* The large majority of comments were received from individuals. Of the 1,720 comments, SBA received approximately 1,610 comments from individuals, thirty-one comments from individuals using form letters from various associations or organizations, forty-five comments from associations or organizations, thirty-one comments from members of Congress, and three comments from other Federal agencies through the public comment process and posted online at www.regulations.gov.

Of the 1,720 comments received, approximately twenty-seven of the comments were not applicable to the rule; four of the comments requested an extension of the public comment period; and 1,689 of the comments requested withdrawal of the proposed rule and/or stated opposition to some portion of the proposed rule. Of the comments that opposed the proposed rule, 1,591 comments requested that the proposed rule be withdrawn; 828 comments stated that some aspect of the proposed rule frustrated Congressional intent; 173 comments opposed the method by which the proposed rule requires a procuring agency to determine that the set-aside is consistent with constitutional standards; 104 comments were concerned with the methodology used by SBA to determine industries in which WOSBs were underrepresented or substantially underrepresented; thirty-six comments alleged that SBA and/or the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) study applied the incorrect level of scrutiny to determine underrepresentation or otherwise addressed Constitutional concerns; seven comments addressed SBA's use of the value of contract dollars to determine underrepresentation; and four comments opposed the proposed self-certification process.

Extension of the Public Comment Period

The SBA received several comments that requested an extension of the public comment period. In response to these comments and the general high level of interest that the proposed rule generated during the public comment period, SBA agreed with the recommendation in these comments and therefore reopened the comment period for an additional 30 days in order to allow the public more time to submit comments on the proposed rule. *See* 73 FR 10697. As a result, the comment period closed on March 31, 2008 and SBA received approximately 1,720 comments.

General Comments on Implementation of the Procedures

Of the comments that opposed the proposed rule, over 700 requested that SBA withdraw the proposed rule but did not provide a substantive reason why SBA should take such action. Accordingly, and for the reasons below, SBA will continue with this final rule setting forth the contracting procedures for WOSBs. In addition, SBA points out that Congress authorized the contracting assistance procedures for WOSBs contained in the final rule as a result of the Federal government's inability to reach the government-wide WOSB contracting goal of 5% of the value of all contract awards. Congress enacted Section 8(m) to authorize creation of a targeted procurement mechanism for WOSBs and it charged SBA with the responsibility for establishing and implementing the governing standards and regulations for these Procedures. The Procedures in the final rule will not only benefit WOSBs, but should help Federal agencies achieve their WOSB participation goals under Section 15(g) of the Small Business Act, 15 U.S.C. 644(g). For all of these reasons, SBA will not withdraw the proposed rule, but instead has decided to move forward with this final rule based on the authority in Section 8(m).

Eligible Industries in Which WOSBs Are Underrepresented or Substantially Underrepresented

The SBA received approximately 104 comments expressing concern that the proposed rule limited WOSB eligibility for restricted-competition contracts to only four industry sectors. These comments stated that SBA should have used a broader methodology in the RAND study to identify the industries in which WOSBs are underrepresented or substantially underrepresented. The comments also state that SBA, without substantive justification, declined to adopt the approach in the RAND study that would have classified 87% of industries as underrepresented, and instead promulgated a rule based on the most restrictive approach proposed by the report. In addition, SBA received comments stating that it was the intent of Congress to increase federal contracts going to WOSBs and that the proposed rule will not accomplish increased participation by WOSBs. Lastly, SBA received a comment stating that the RAND report and therefore the proposed rule based its conclusions on the erroneous assumptions that the past contract opportunities analyzed by the RAND study are and will remain constant across all of the potentially affected industries.

In response to these comments, SBA notes that Section 8(m) requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement. SBA initially completed the legislatively mandated study in September 2001. However, in March 2005, the National Academy of Sciences (NAS) issued an independent evaluation determining that SBA's original study was ''fatally flawed.'' In response to the NAS findings, SBA issued a solicitation

in October 2005 seeking a contractor to perform a revised study in accordance with the NAS report. In February 2006, SBA awarded a contract to RAND to complete a revised study of the underrepresentation of WOSBs in Federal procurement in accordance with the NAS findings. The RAND report was published in April 2007. The report, along with the supporting back-up datasets used to identify underrepresentation, are available to the public at *http://www.rand.org/pubs/technical_reports/TR442/*.

The RAND study outlines twenty-eight different approaches for measuring the underrepresentation of WOSBs by using a disparity ratio. Each approach uses a different data source or a different version of the same data source, and each of the data sources was recommended by the NAS findings. Depending on the approach used, the RAND study yielded different levels of WOSB representation in Federal procurement. For the reasons set forth in the proposed rule, SBA eliminated various non-justifiable approaches and selected the approach that it believed most appropriately conformed to the applicable statutory requirements, most accurately reflected the measure employed, and was legally justifiable. The selected approach compared the percentage of Federal contract dollars going to WOSBs to the percentage of total revenue from all sources going to WOSBs in 4-digit NAICS codes (''disparity ratio''). Using this approach, SBA issued a proposed rule that identified four industries in which WOSBs were underrepresented or substantially underrepresented. The comments that SBA received were opposed to the determination that WOSBs were eligible for contracts in only four industries.

Although SBA did not receive any comments on the reliability of the data sources used for the selected approach, as indicated above, SBA did receive a large number of comments opposing the selected approach. As a result, SBA engaged in a further review and examination of the RAND study, including the data sources and in particular the CCR data set, which was relied upon to arrive at the four industries in which WOSBs were found to be underrepresented and substantially underrepresented. As a result of this further examination, SBA has now identified a limitation inherent in the CCR data set. Specifically, when RAND computed the disparity ratio to determine underrepresentation, each firm's total revenue was counted in every NAICS code associated with the firm. This has resulted in firms' total revenue being counted for multiple NAICS codes, overstating the aggregate revenue figures. Although the CCR data set was publicly available along with the RAND report at *http://www.rand.org/pubs/technical_reports/TR442/*, this CCR data set limitation was not specifically disclosed in the RAND study or to the public in the proposed rule.

Therefore, concurrently with the issuance of this final rule, SBA is issuing a Proposed Rule; Request for Comment that seeks input from the public on what effect, if any, the CCR data has on the disparity ratio, and ultimately, the determination that WOSBs are underrepresented or substantially underrepresented in the various industries. This CCR data limitation is fully explained in the Proposed Rule; Request for Comment. The Proposed Rule; Request for Comment also seeks comment on an alternative data set not analyzed by RAND or included in the proposed rule.

In light of the foregoing, this final rule does not identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal procurement. Therefore, SBA has determined that it is premature to address the public comments opposing SBA's identification of the eligible industries. Once SBA has received and evaluated the public's comments on the data limitation in response to the Proposed Rule; Request for Comments, SBA will publish a Notice in the **Federal Register** that contains the rationale for its final determination and a list of eligible industries. SBA will also post on its Internet Web site a list of 4-digit NAICS Industry Subsector industries it designates under § 127.501(a).

Use of Dollars as the Measure of WOSB Underrepresentation

As indicated above, SBA determined that the most justifiable approach to determining WOSB representation compared the percentage of contract dollars going to WOSBs to the percentage of revenue dollars going to WOSBs. SBA received several comments on the decision to use contract dollars as the measure of underrepresentation. These comments stated that the use of the number of contracts as the measure of underrepresentation will more likely help to achieve the 5% goal and is therefore consistent with Congressional intent.

SBA disagrees with these comments and believes that the use of contract dollars as the measure is more consistent with the relevant statutory requirements and Congressional intent. When considering whether to use the dollar value of contract awards or the number of contract awards as the measure of underrepresentation, SBA evaluated the benefits and limitations of either choice. As indicated in the proposed rule, after careful analysis, SBA decided to adopt an approach consistent with statutory measures, which use dollars. Most importantly, Congress, through the Small Business Act, has given relevant direction only in dollars. Section 15(g)(1) is the section in the Act that provides direction on counting small business goals. All of those goals are aimed at achieving a dollar amount (total value) relative to all dollars expended in Federal procurement. In particular, the goal for small business concerns owned and controlled by women states that: ''The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.'' 15 U.S.C. 644(g)(1) (emphasis added). Congress authorized the contracting assistance procedures in Section 8(m) to assist Federal agencies in achieving this goal.

In addition, Congress appropriates Federal funding in dollars, the Federal budget is divided in dollars, all Federal government contracts are awarded in dollars, and the accounting and auditing processes focus on how these dollars are spent. Dollar amounts can easily be compared across agencies, programs and NAICS codes. Tracking dollar amounts also avoids problems that arise from the contracting nuances of the individual agencies. Contract actions do not allow for an accurate accounting of the financial benefits and business development that occur when small businesses receive a Federal contract.

Based on the above, a measure that determines underrepresentation based on the number of contract awards going to WOSBs would not align with the purpose behind Congress's passage of the Section 8(m) legislation or with the other Congressional measures. On the other hand, a measure based on contract dollars is consistent with the 5% goal, which is also based on contract dollars, and therefore conforms more closely to the Congressional intent and purpose of Section 8(m). Based on this determination, the proposed rule defined ''substantial underrepresentation'' and ''underrepresentation'' as a ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

For the reasons stated above, the final rule adopts the definitions of underrepresentation and substantial underrepresentation without modification.

Agency-by-Agency Determination

Commenters also voiced concerns over the requirement in proposed § 127.501(b) that the procuring agency conduct its own, additional analysis of its procurement history, and make a determination whether the agency itself had discriminated against WOSBs in the relevant industry. The comments state that this requirement frustrates Congressional intent by applying a strict-scrutiny standard when gender-based preferences need only satisfy the standard of intermediate scrutiny. The comments also state that the disparity study analysis conducted by RAND is sufficient to satisfy the intermediate scrutiny standard and that the agency determination of discrimination requirement has no basis in law. The comments further state that the requirement would unduly limit the industries in which WOSBs were underrepresented or substantially underrepresented. Lastly, the comments state that this requirement would substantially burden the procuring agencies and that the procuring agencies will avoid set-asides to avoid self-incrimination and litigation.

As reflected in both the proposed rule and in this final rule, SBA agrees that the intermediate scrutiny standard applies to gender-based set-asides. The equal protection requirements of the Fifth Amendment prohibit Federal agencies from discriminating on the basis of sex in awarding contracts unless the preference furthers important governmental objectives and the means employed are substantially related to the achievement of those objectives. *See United States* v. *Virginia*, 518 U.S. 515, 533 (1996). This standard, which requires an ''exceedingly persuasive justification,'' *id.*, is commonly referred to as ''intermediate scrutiny'' and sometimes as ''heightened scrutiny.'' See id. at 555. The RAND study and the final rule acknowledge the application of the intermediate scrutiny standard to gender-based preferences.

In applying this standard, Federal courts have generally required that the government establish probative evidence of discrimination in the relevant economic sphere in order to justify sex-based contracting preferences. See, e.g., *Engineering Contractors Ass'n of South Florida* v. *Metropolitan Dade County*, 122 F.3d 895, 910 (11th Cir. 1998); *Contractors Ass'n of Eastern Penna.* v. *City of Philadelphia*, 6 F.3d 990, 1010–11 (3d Cir. 1993); *Hershell Gill Consulting Engineers, Inc.* v. *Miami-Dade County*, 333 F.Supp.2d 1305, 1317 (S.D. Fla. 2004). Based on the Federal Court precedents, the U.S. Department of Justice has advised SBA that before a contracting officer may restrict competition to WOSBs under section 8(m), it must be determined through appropriate analysis (which analysis may include examination of the concerned agency's procurement history) that the set-aside will be consistent with the foregoing constitutional standards. In particular, it must be determined whether the set-aside is substantially related to remedying sex discrimination in the affected industry. For the foregoing reasons, SBA cannot agree with the comments that section 127.501(b) of the proposed rule has no basis in the law and is inconsistent with intermediate scrutiny. As the cases above illustrate, intermediate scrutiny has been held to require evidence of discrimination in the relevant economic sphere in order to justify gender-based set asides in that sphere. The standard in section 127.501(b) is fully consistent with this judicially recognized discrimination requirement, and in fact represents one of the soundest, most reliable means of ensuring compliance with it. In addition, because the RAND study correctly acknowledges that the unrefined disparity ratios it found are not in and of themselves measures of discrimination, SBA disagrees with the comments that contend the RAND study alone is sufficient to satisfy the intermediate scrutiny.

As to the comments that the requirement of agency-specific findings of discrimination would be too burdensome for agencies, the SBA believes that individual contracting agencies are in a better position than the SBA to evaluate the connection between disparity and discrimination in certain contracting sectors because SBA does not have access to details of procurement history within other agencies. Accordingly, although requiring contracting agencies to identify evidence of discrimination in relevant contracting spheres would no doubt impose some burden, this allocation is less costly and burdensome than having SBA try to make discrimination findings based upon private sector or agency procurement data to which the agency does not have access. Furthermore, these additional agency findings will further augment the data upon which the RAND study is based and, in this way, more than compensate for any burden the procuring authorities might encounter.

The SBA further disagrees with the concern that an agency finding of discrimination could be perceived as an admission of unlawful conduct. An agency-specific finding of past discrimination would not necessarily constitute an admission of liability for past unlawful conduct because courts have noted that agency discrimination may in some instances result from an agency's passive participation in a discriminatory market.

For the foregoing reasons, the final rule adopts § 127.501 without any change.

Substantially Underrepresented Industries

SBA received at least one comment that was concerned with SBA's statement in the proposed rule that the provisions of Section 8(m) appear literally to authorize set-asides for Federal contracts only in industries in which WOSBs are determined to be substantially underrepresented. See 15 U.S.C. 637(m)(2)(C), (3). The comment states that this provision is unclear and conflicting, resulting in a disingenuous partial implementation of the statute that is not aligned with Congressional intent. The comment recommends SBA to recognize that, in industries where women are substantially underrepresented, the requirement of being economically and socially disadvantaged should not apply at all because of the disparity between utilization and availability.

As SBA accurately stated in the proposed rule, due to an apparent drafting error in the cross-reference and the inter-relationships between subparagraphs (2)(C), (3) and (4) of 15 U.S.C. 637(m), subparagraph (2)(C)—by its express cross-reference to subparagraph (3) rather than to subparagraph (4)—literally appears to authorize set-asides for Federal contracts only in industries in which WOSBs are determined to be substantially underrepresented. However, if the statute were construed by SBA not to authorize set-asides in industries in which WOSBs were merely underrepresented, the provision in the statute requiring SBA to conduct a study to determine industries in which WOSBs are underrepresented, as well as the section's waiver provision, would arguably be rendered inoperative or contradictory.

Accordingly, based on the above reasoning, and as already stated in the proposed rule, SBA believes that the legislation is properly interpreted to authorize set-asides industries in which

WOSBs are determined to be underrepresented or substantially underrepresented.

Effect of Status Protest

SBA received two comments regarding the proposed protest procedures in § 127.600, *et seq.* These comments were concerned that the proposed rule did not address what would happen to a pending or already issued WOSB contract award when a status protest was filed with the contracting officer.

SBA agrees that proposed § 127.604 fails to provide any direction to contracting officers as to whether they are required to suspend the contract award or performance on the award until the status protest has been resolved. Therefore, SBA has amended § 127.604(f) to allow a contracting officer to award a contract or begin performance after receipt of a protest, but only if the contracting officer has determined that the award must be made to protect the public interest. The proposed rule's preamble did give some guidance for this decision, stating generally that a status protest ''halts the procurement until SBA investigates the allegations and reaches a decision.'' For the foregoing reasons, the following provision to § 127.604(d) will be added: The contracting officer may award the contract or begin performance after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

Self-Certification Process

SBA received several comments on the self-certification process. These comments criticize SBA for creating a new certification process for these Procedures by requiring WOSBs to self-certify. The comments urge SBA to instead accept WOSB certifications from other organizations as the sole method for certification. In addition, a comment recommended that the certification rules be rewritten to prevent large corporate influence over the certification process. This comment fails to include any suggestion on how the recommendation can be accomplished.

SBA believes that the self-certification process set forth in this final rule is consistent with the statutory framework of Section 8(m) and with prevailing Supreme Court precedent. Section 127.300 requires WOSBs to be registered in the Central Contractor Registration (CCR) and have a current self-certification posted on Online Representations and Certifications Application (ORCA) that it qualifies as an EDWOSB or WOSB. Specifically, § 127.300 provides that at the time a concern submits an offer on a specific contract reserved for competition under these procedures, it must be registered in the CCR and have a current self-certification posted on the ORCA affirming that it qualifies as an EDWOSB or WOSB. That section further details the specific representations that concerns must include as part of their self-certification, including that: (1) The firm is a small business concern under the size standard assigned to the particular procurement; (2) it is at least 51 percent owned and controlled by one or more women who are United States citizens or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and (3) neither SBA nor an SBA-approved certifier has determined that the concern does not currently qualify as an EDWOSB or WOSB.

Because ORCA is the Federal Government's generally accepted representations and certifications process that concerns currently utilize to self-certify other forms of small business status in Federal procurements, using that system for the WOSB self-certification process for Federal procurement would be the logical choice and would minimize interference with the procurement process and the burden on contracting officers and WOSBs. In addition, because certifying entities may not all use the same eligibility criteria applicable to EDWOSBs and WOSBs as provided under this rule, SBA does not intend automatically to accept additional third-party certifications for purposes of these Procedures. Rather, once SBA has determined that a certifier uses the same criteria and follows appropriate procedures and standards, SBA may designate that entity as an approved certifier. The SBA will maintain a list of all approved certifiers on its Web site.

SBA also believes the self-certification process in this rule will minimize delays and disruption to the contracting process by utilizing the existing system of representations and certifications in Federal procurement and by not requiring contracting officers to review voluminous documents supporting a concern's self-certification. It also puts a minimum burden on the EDWOSB and WOSB desiring to do business with the Federal government. At the same time, the self-certification in the CCR and ORCA will help minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status through the use of robust protest procedures coupled with the provisions for appropriate examinations to monitor the eligibility of firms that self-certify their status and existing fraud statutes and procedures. These procedures are also consistent with other contracting preferences procedures.

Other SBA Contracting Preferences

SBA received one comment stating that the proposed rule wrongly creates procedures that must compete with other set-aside incentives, such as the 8(a) Business Development Program, for the attention of agency contracting officers.

In response to this comment, SBA assumes that the commenter was referring to § 127.503(c) of the proposed rule, which made clear that a contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD Program, unless SBA consented to release the requirement from the 8(a) BD Program. Because this limitation on the restriction of competition serves to reconcile the goal requirements of 15 U.S.C. 644(g) with the requirements of section 8(m), it is authorized by the Administrator's general authority to ''make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter.'' 15 U.S.C. 634(b)(6). This final rule does not create an order of preference among SBA's contracting programs and is intended to be consistent with SBA's policy of parity among its contracting programs.

In addition, SBA notes that the Federal government spends billions of dollars each year in Federal procurement. Lastly, § 127.502 is necessary to ensure the integrity of the business development aspects of the 8(a) BD Program. Generally, the requirement will be retained for 8(a) participation, but may be released by SBA as indicated in the regulation. Thus, SBA has not amended the final rule to adopt this comment.

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

Regulatory Impact Analysis

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

thereby necessitating a regulatory impact analysis. OMB has also determined that this rule is not a major rule as defined by the Congressional Review Act.

The SBA received one comment on the regulatory impact analysis. That comment questioned SBA's rationale that the Procedures will result in increased costs to the taxpayer. The comment cites a Department of Defense study which showed that price preference did not increase costs in contracts won by small disadvantaged businesses.

Although SBA did state in its regulatory impact analysis that the rule directs benefits to EDWOSBs and WOSBs at some cost to the taxpayer through restrictions on competition, the SBA also noted that, generally, the cost of transferring a contract from one business to another has minimal cost to society as a whole. In addition, the analysis stated that the loss of efficiency through restrictions in contracting has broader impacts that depend highly on the use of these Procedures by contracting officers and the availability of competition among EDWOSBs and WOSBs. SBA further analyzed that the most significant effect of this rule will be the transfer of contract dollars to EDWOSBs and WOSBs through the contracting officers' ability to restrict competition to EDWOSBs or WOSBs in industries in which SBA has determined that WOSBs are underrepresented and substantially underrepresented and where certain threshold determinations are made by an agency.

As to the remainder of SBA's Regulatory Impact Analysis, SBA did not receive any comments and is not aware of any additional information that would require revision of its initial conclusions. Therefore, SBA continues to believe that the initial analysis was accurate.

Executive Order 12988

This action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. 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.

In the event of a protest, this final rule will allow a WOSB concern to substantiate its self-certifications by submitting an existing certification from an SBA approved State Government certifier. In order for SBA to accept a State's certification, the State must show that its certification process meets certain standards, including a showing that its process is based on the same criteria for WOSB or EDWOSB eligibility, as set forth in this regulation. However, this final rule will not mandate how the States conduct their certification processes, and as such the rule will not have a direct effect on the States. Therefore, for the purposes of Executive Order 13132, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act (PRA)

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this proposed rule does not impose any new reporting or recordkeeping requirements. The certification process described in Subpart C, §§ 127.300 to 127.305, is not an information collection. In general, certifications are not subject to the PRA notice and review requirements unless such certifications are used as a substitute for collecting information. The proposed self-certification process does not require any concern seeking to benefit from Federal contracting opportunities designated for WOSBs or EDWOSBs to submit or maintain any information. Rather, the concern will use the existing electronic contracting system (*i.e.*, ORCA) to confirm the following statements, under penalty of perjury:

(1) The concern is certified as a EDWOSB or WOSB by a certifying entity approved by SBA and there have been no changes in its circumstances affecting its eligibility since certification; or

(2) The concern meets each of the applicable individual eligibility requirements described in subpart B, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as a EDWOSB or WOSB. The process for the annual recertification is similar in nature and as such also does not require any reporting or recordkeeping.

The only occasion on which concerns would have to submit information to SBA would be in the context of a protest or examination, when SBA might request that a particular WOSB submit documentation to substantiate its claim; however, this rule does not require the WOSBs to maintain any specific information for this purpose. Further, any request for substantiation would not be standardized but rather would be specific to a WOSB's particular status, and as such are also not subject to the PRA.

Regulatory Flexibility Act

SBA has determined that this rule establishing a set-aside mechanism for WOSBs may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* Accordingly, SBA prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of the proposed rule in accordance with section 603, title 5, of the United States Code. The IRFA examined the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there were any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there were any significant alternatives to the proposed rule. The Agency's final regulatory flexibility analysis (FRFA) is set forth below.

1.What are the reasons for, and objectives of, this final rule?

SBA is establishing procedures pursuant to the SBA Reauthorization Act, Public Law 106–554, enacted December 21, 2000, codified at Section 8(m) of the Small Business Act, which authorizes the creation and implementation of a new mechanism for Federal contracting with WOSBs. The purpose of the final rule is to create a framework and infrastructure for implementing these Procedures, thereby providing a tool for Federal agencies to increase Federal procurement opportunities to WOSBs. SBA is finalizing this regulation pursuant to section 8(m) of the Small Business Act, 15 U.S.C. 637(m).

These Procedures will assist Federal agencies in achieving the Federal

Government's goal of awarding five percent of Federal contract dollars to WOSBs, as provided in the Federal Acquisition Streamlining Act of 1994. Federal procurement was just over $340 billion in FY 2006, the most recent fiscal year for which procurement data are available, and only $11.6 billion, or barely more than 3.4 percent, was awarded to WOSBs.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made as a Result of Such Comments

SBA has set forth an analysis of the public comments on the Proposed Rule near the beginning of this final rule. However, the Agency did not receive any comments in response to the IRFA and is not aware of any additional information that would require revision of its initial conclusions. Therefore, SBA continues to believe that the initial analysis was accurate.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

The RFA directs agencies to provide a description, and where feasible, an estimate of the number of small business concerns that may be affected by the rule. This final rule will ultimately establish in the Federal Acquisition Regulation (FAR) a new procurement mechanism to benefit WOSBs. Therefore, WOSBs that compete for Federal contracts are the specific group of small business concerns most directly affected by this rule. More specifically, when the required procuring agency determination is made, this rule may affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented or substantially underrepresented and may affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented. In addition, the rule may affect other small businesses, as described below, to the extent that small businesses not owned and controlled by women or non-eligible WOSBs may be excluded from competing for certain Federal contracting opportunities.

The 2002 Survey of Business Owners published by the U.S. Bureau of the Census reported 6,489,493 women-owned businesses in the United States. More than 900,000 of these businesses have one or more paid employees. Most women-owned businesses, however, do not participate in the Federal contracting market. In addition, the SBO number represents all women-owned business (large and small) and only WOSBs are eligible under the regulations. As of January 21, 2007, approximately 93,000 businesses represented themselves as WOSBs in the Federal Government's CCR as actual or potential Federal contractors. The study conducted by the RAND Corporation for SBA narrowed the pool of WOSBs in the CCR to approximately 56,000 to more closely approximate the universe of firms who are ready, willing, and able to do business with the Government.[1] However, far fewer than 56,000 WOSBs are likely to be affected by this final rule because the number of entities to which the rule will apply will greatly depend on SBA's determination of the industries in which WOSBs are underrepresented or substantially underrepresented.

In addition, WOSBs who are not economically disadvantaged could be affected only to the extent that they compete for Federal contracts in industries in which WOSBs are determined to be substantially underrepresented. For industries in which WOSBs are determined to be substantially underrepresented, the potential number of WOSBs that could be direct beneficiaries of these Procedures restricting certain Federal contracts to WOSBs is also likely to be much fewer than the number of WOSBs registered in CCR, since not all WOSBs will satisfy the eligibility requirements for EDWOSB status. The CCR currently lists only 4,210 SDBs owned and controlled by one or more women. This is a useful statistic because the $750,000 net worth requirement is the same for SDBs and for WOSBs. While SBA acknowledges that there may be other WOSBs in existence besides those listed in the CCR as being certified by SBA as SDBs, it is difficult to envision more than 6,000 WOSBs that could meet SBA's eligibility criteria and that are also ready, willing, and able to bid on Government contracts.

Moreover, the anticipated benefits of these Procedures may be less attractive to many WOSBs than a number of other preferences designed to assist small businesses, such as HUBZone, 8(a)BD, and others. Not all areas of Federal procurement are likely to be designated as underrepresented or substantially underrepresented, and opportunities in some of the qualified industries may be limited. Consequently, many otherwise-qualified EDWOSBs and WOSBs may not find it advantageous to pursue contract opportunities under these Procedures.

This final rule will also affect non-WOSBs (small businesses not 51 percent owned and controlled by women) seeking Federal contracts for which competition has been restricted to participants in these Procedures. This would be particularly harmful for those businesses that derive a significant portion of their business from Federal contracting. As of January 2007, the CCR lists approximately 376,000 small businesses that are not WOSBs. To the extent that contracting officers use these Procedures, non-WOSBs may be excluded from competing for certain Federal contracting opportunities. However, this would occur only in industries in which WOSBs have been found to be underrepresented or substantially underrepresented and where the anticipated dollar value of the procurement does not exceed $3 million or $5 million, in the case of manufacturing contracts. The number of small businesses that would be excluded from eligibility for a set-aside under these procurements or from future such determinations is not known at this time, but it could be a substantial number.

Additional contracting opportunities identified by Federal agencies as candidates to be set aside for WOSBs will come from new contracting requirements and contracts currently performed by small and large businesses. At this time, SBA cannot accurately predict how the existing distribution of contracts by business type may change with this rule. However, SBA does not expect a great many of the contracts awarded through the 8(a), HUBZone, or SDVOSB Programs ($22.6 billion in FY 2006) to be re-competed as WOSB or EDWOSB set-aside contracts because those programs also support other socioeconomic goals that agencies strive to achieve through their contracting activities. It is acknowledged, however, that some redistribution of contracts among the various socioeconomic groups is likely to occur as a result of these Procedures.

4. What Are the Projected Reporting, Recordkeeping, Paperwork Reduction Act and Other Compliance Requirements?

As explained above, WOSBs and EDWOSBs will not be required to undergo any formal certification process

[1] RAND eliminated firms with less than $1,000 in annual revenue; counted a firm only once if they were registered more than once for multiple locations; eliminated other apparent duplications; and eliminated vendors that were only interested in competing for grants (as opposed to contracts).

to participate in these Procedures. Accordingly, there are no reporting or recordkeeping requirements on the affected industry. There will be some recordkeeping requirements for the Government; but since the Government already tracks procurement awards to WOSBs, the additional reporting requirements will require minimal changes to existing systems. SBA is working with the Integrated Acquisition Environment, which is managed by GSA, to ensure that CCR, ORCA, and the Federal Procurement Data System-Next Generation (FPDS-NG) contain the fields needed to capture the new socio-economic data. EDWOSB will be a new classification that the Government has not previously used.

5. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

SBA has minimized the significant economic impact on small entities. As discussed in the previous section, WOSBs and EDWOSBs will not be required to undergo any formal certification process to participate in these Procedures. Section 8(m) of the Small Business Act, which is the authorizing statutory provision for these Procedures, allows SBA to decide on the type of certification needed to implement these Procedures. Specifically, a WOSB may be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator; or a WOSB may self-certify to the contracting officer that it is a small business concern owned and controlled by women, along with adequate documentation in accordance with standards established by the Administration. As discussed earlier, SBA will allow EDWOSBs and WOSBs to self-certify their status in the existing CCR and ORCA databases.

An alternative approach would have been to require EDWOSBs and WOSBs to apply to SBA for formal certification. SBA has ruled out this approach as unnecessary and too costly. The SBA believes that eligibility examinations and protest procedures incorporated into the final rule will minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status. SBA has decided that allowing self-certification and the option for firms to apply for certification from SBA-approved certifiers, when combined with random eligibility examinations and a formal protest procedure, is a more viable approach than formal certification by SBA and greatly reduces the burden on small entities.

In addition, SBA estimates that implementation of this regulation will require no additional proposal costs for WOSBs, as compared to submitting proposals under any other small business set-aside preferences. Moreover, WOSBs currently represent their status for purposes of data collection that is needed to implement 15 U.S.C. 644(g); therefore, the self-certification process of this final rule imposes no additional requirement on WOSBs.

Pursuant to Executive Order 13272 dated August 16, 2002, agencies issuing final rules are required to discuss any comments received from SBA's Office of Advocacy in response to the proposed rule. In this case, SBA's Office of Advocacy submitted formal comments on February 20, 2008, which recommended that the Final Regulatory Flexibility Analysis provide cost data on the effort required by WOSBs and EDWOSBs to play a role in compelling agencies to make a finding of discrimination prior to using a set-aside process for WOSB contract. With respect to this recommendation, SBA notes that each agency is responsible for conducting an analysis and making a determination of whether there has been past discrimination in a particular industry by that agency. Advocacy's position rests on the assumption that there is an expectation that WOSBs should play a role in the determination process. WOSBs are not required, nor are they expected, to participate in this process. The Small Business Act has set the Government-wide goals for contracts awarded to WOSBs at not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year. SBA believes that the procuring agencies which have not achieved their agency goals for WOSB awards are likely to move forward to determine if there is discrimination in order to achieve the agency's individual goals for WOSB awards. Thus, SBA does not anticipate any cost to WOSBs and EDWOSBs to compel an agency to make a determination of discrimination.

Furthermore, the procuring agencies are best-suited to make a determination of whether there is discrimination within a certain industry because they have the necessary agency procurement data and history more readily available than the SBA. Therefore, while the SBA can conduct government-wide disparity studies identifying the industries that have been underrepresented by women, the individual procuring agencies have the necessary information to justify individual WOSB awards. This does not translate into an additional cost for WOSBs or EDWOSBs as they are not required or expected to participate in the process of determining evidence of discrimination.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions, Rules of practice for appeals, Appeals of size determinations, Appeals of NAICS code designations, Appeals under the 8(a) Program, Appeals from service-disabled veteran-owned small business concerns protests.

■ For the reasons stated in the preamble, SBA amends 13 CFR parts 121, 125, 127 and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, and 662(5); and Public Law 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

§ 121.401 [Amended]

■ 2. Amend § 121.401 by adding the phrase ''the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures,'' after the phrase ''SBA's HUBZone Program''.

■ 3. Amend § 121.1001 by adding a new paragraph (a)(9) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(9) For SBA's WOSB Federal Contracting Assistance Procedures, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB) pursuant to part 127;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director for Government Contracting, or designee.

* * * * *

■ 4. Amend § 121.1008 (a) by adding a new sentence after the second sentence to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or a request for a formal size determination?

(a) * * * If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 5. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, and 657f.

■ 6. Amend § 125.6 by revising paragraph (a) introductory text to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that:

* * * * *

■ 7. Add a new part 127 to read as follows:

PART 127—WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES

Subpart A—General Provisions

Sec.
127.100 What is the purpose of this part?
127.101 What type of assistance is available under this part?
127.102 What are the definitions of the terms used in this part?

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?
127.201 What are the requirements for ownership of an EDWOSB and WOSB?
127.202 What are the requirements for control of an EDWOSB or WOSB?
127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

Subpart C—Certification of EDWOSB or WOSB Status

127.300 How is a concern certified as an EDWOSB or WOSB?
127.301 When may a contracting officer accept a concern's self-certification?
127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?
127.303 How will SBA select and identify approved certifiers?
127.304 How does a concern obtain certification from an approved certifier?
127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

Subpart D—Eligibility Examinations

127.400 What is an eligibility examination?
127.401 What is the difference between an eligibility examination and an EDOWSB or WOSB status protest pursuant to subpart F of this part?
127.402 How will SBA conduct an eligibility examination?
127.403 What happens if SBA verifies the concern's eligibility?
127.404 What happens if SBA is unable to verify a concern's eligibility?
127.405 What is the process for requesting an eligibility examination?

Subpart E—Federal Contract Assistance

127.500 In what industries is a contracting officer authorized to restrict competition under this part?
127.501 How will SBA and the agencies determine the industries that are eligible for EDWOSB or WOSB requirements.
127.502 How will SBA identify and provide notice of the designated industries?
127.503 When is a contracting officer authorized to restrict competition under this part?
127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?
127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?
127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

Subpart F—Protests

127.600 Who may protest the status of a concern as an EDWOSB or WOSB?
127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?
127.602 What are the grounds for filing an EDWOSB or WOSB status protest?
127.603 What are the requirements for filing an EDWOSB or WOSB protest?
127.604 How will SBA process an EDWOSB or WOSB status protest?
127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

Subpart G—Penalties

127.700 What penalties may be imposed under this part?

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

Subpart A—General Provisions

§ 127.100 What is the purpose of this part?

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to increase Federal contracting opportunities for women-owned small businesses (WOSBs) and to assist agencies in achieving their WOSB participation goals established under Section 15(g) of the Small Business Act.

§ 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented or substantially underrepresented in Federal procurement and in which the procuring agency has satisfied itself through appropriate analysis (including analysis of its own procurement history), that the set-aside would meet all applicable legal requirements, including the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

§ 127.102 What are the definitions of the terms used in this part?

For purposes of this part:

8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant.

AA/GC&BD means SBA's Associate Administrator for Government Contracting and Business Development.

Central Contractor Registration (CCR) means the system that functions as the central registration and repository of contractor data for the Federal government. CCR also serves as the single portal for conducting searches of small business contractors. Prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

Citizen means a person born or naturalized in the United States.

Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in § 121.105 this chapter.

Contracting officer has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

D/GC means SBA's Director for Government Contracting.

Economically disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this title and that is at least 51% owned and controlled by one or more women who are U.S. citizens and who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to EDWOSBs.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement, the contracting activity's contracting officer, or SBA.

ORCA means the Online Representations and Certifications Application at *https://orca.bpn.gov*, a required registration for contractors interested in bidding on most Federal contracts.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at *http://www.census.gov/NAICS*. In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in § 121.107 of this chapter.

Small disadvantaged business (SDB) means a concern that SBA has certified in accordance with subpart B of part 124 of this chapter, and is designated on CCR as an SDB.

Substantial underrepresentation means a disparity ratio between 0.0 and 0.5; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

Underrepresentation means a disparity ratio between 0.5 and 0.8; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

WOSB means a concern that is small pursuant to part 121 of this chapter, and that is at least 51% owned and controlled by one or more women in accordance with §§ 127.200, 127.201 and 127.202.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB*. To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB*. To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General*. To qualify as an EDWOSB or WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership*. To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership*. To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership trusts) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership*. In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company*. In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women.

(f) *Ownership of a corporation*. In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General*. To qualify as an EDWOSB or WOSB, the management and daily business operations of the concern must be controlled by one or more women. Control by one or more women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women.

(b) *Managerial position and experience*. A woman must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to run the concern. The woman manager need not have the technical expertise or possess the required license

to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman who holds the highest officer position of the concern may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women must control the Board of Directors of the concern. Women are considered to control the Board of Directors when either:

(1) One or more women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51% owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

(b) *Limitation on personal net worth.* In order to be considered economically disadvantaged, the woman's personal net worth must be less than $750,000, excluding her ownership interest in the concern and equity in her primary personal residence.

(c) *Factors that may be considered.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past two years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, may be considered in determining whether she is economically disadvantaged.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

Subpart C—Certification of EDWOSB or WOSB Status

§ 127.300 How is a concern certified as an EDWOSB or WOSB?

(a) *General.* At the time a concern submits an offer on a specific contract reserved for competition under this Part, it must be registered in the Central Contractor Registration (CCR) and have a current self-certification posted on the Online Representations and Certifications Application (ORCA) that it qualifies as an EDWOSB or WOSB.

(b) *Form of certification.* In conjunction with its required registration in the CCR database, the concern must submit a self-certification to the electronic annual representations and certifications at *http://orca.bpn.gov*, that it is a qualified EDWOSB or WOSB. The self-certification must include a representation, subject to penalties for mispresentation, that:

(1) The concern is certified as a EDWOSB or WOSB by a certifying entity approved by SBA and there have been no changes in its circumstances affecting its eligibility since certification; or

(2) The concern meets each of the applicable individual eligibility requirements described in subpart B of this part, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as a EDWOSB or WOSB.

(c) *Update of certification.* The concern must update its EDWOSB and WOSB representations and self-certification on ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and self-certification are effective for a period of one year from the date of submission or update to ORCA.

§ 127.301 When may a contracting officer accept a concern's self-certification?

(a) *General.* A contracting officer may accept a concern's self-certification on ORCA as accurate for a specific procurement reserved for award under this Part in the absence of a protest or other credible information that calls into question the concern's eligibility as a EDWOSB or WOSB. An example of such credible evidence includes information that the concern was determined by SBA or an SBA-approved certifier not to qualify as an EDWOSB or WOSB.

(b) *Referral to SBA.* When the contracting officer has information that calls into question the eligibility of a concern as an EDWOSB or WOSB, the contracting officer must refer the concern's self-certification to SBA for verification of the concern's eligibility by filing an EDWOSB or WOSB status protest pursuant to subpart F of this Part.

§ 127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

(a) *General.* In order for a concern to use a certification by another entity as evidence of its status as a qualified EDWOSB or WOSB in support of its representations in ORCA pursuant to § 127.300(b), the concern must have a current, valid certification from:

(1) SBA as an 8(a) BD or SDB women-owned concern in good standing;

(2) The Department of Transportation as a disadvantaged business enterprise

(DBE) that is at least 51 percent owned and controlled by one or more women; or

(3) An entity designated as an SBA-approved certifier on SBA's Web site located at *http://www.sba.gov/GC*.

(b) [Reserved]

§ 127.303 How will SBA select and identify approved certifiers?

(a) *General.* SBA may enter into written agreements to accept the EDWOSB or WOSB certification of a Federal agency or national certifying entity if SBA determines that the entity's certification process complies with SBA-approved certification standards and is based upon the same EDWOSB or WOSB eligibility requirements set forth in subpart B of this part. The written agreement will include a provision authorizing SBA to terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same EDWOSB or WOSB eligibility requirements as set forth in subpart B of this part.

(b) *Required certification standards.* In order for SBA to enter into an agreement to accept the EDWOSB or WOSB certification of a Federal agency, state government, or national certifying entity, the entity must establish the following:

(1) It will render fair and impartial EDWOSB or WOSB eligibility determinations.

(2) Its certification process will require applicant concerns to pre-register on CCR and submit sufficient information to enable it to determine whether the concern qualifies as an EDWOSB or WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under SBA's size standards for its primary industry classification;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(iii) In the case of a concern applying for EDWOSB certification, at least 51 percent owned and controlled by one or more women who are United States citizens and economically disadvantaged.

(3) It will not decline to accept a concern's application for EDWOSB or WOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, or marital or family status.

(c) *List of SBA-approved certifiers.* SBA will maintain a list of approved certifiers on SBA's Internet Web site at *http://www.sba.gov/GC*. Any interested person may also obtain a copy of the list from the local SBA district office.

§ 127.304 How does a concern obtain certification from an approved certifier?

A concern that seeks EDWOSB or WOSB certification from an SBA-approved certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier. Any interested party may obtain such certification information and application by contacting the approved certifier at the address provided on SBA's list of approved certifiers.

§ 127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

A concern that SBA or an SBA-approved certifier determines does not qualify as an EDWOSB or WOSB may not represent itself to be an EDWOSB or WOSB, as applicable, unless SBA subsequently determines that it is an eligible EDWOSB or WOSB pursuant to the examination procedures under § 127.405 of subpart D, and there have been no material changes in its circumstances affecting its eligibility since SBA's eligibility determination. Any concern determined not to be a qualified EDWOSB or WOSB may request that SBA conduct an examination to determine its EDWOSB or WOSB eligibility at any time once it believes in good faith that it satisfies all of the eligibility requirements to qualify as an EDWOSB or WOSB.

Subpart D—Eligibility Examinations

§ 127.400 What is an eligibility examination?

An eligibility examination is an investigation by SBA to verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA may, in its sole discretion, perform an examination at any time after a concern self-certifies in CCR or ORCA that it is an EDWOSB or WOSB.

§ 127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Eligibility examination.* An eligibility examination is the formal process through which SBA verifies and monitors the continuing eligibility of a concern that is designated on CCR or ORCA as an EDWOSB or WOSB. For purposes of an examination, the D/GC will determine the eligibility of a concern as of the date SBA notifies the concern that it will conduct the examination. The D/GC's eligibility decision constitutes the final agency decision and will be effective and apply to all solicitations issued on or after the date of the decision issued pursuant to §§ 127.403, 127.404(b), or 127.405(e). If SBA is conducting an eligibility examination on a concern that has submitted an offer on a pending EDWOSB or WOSB procurement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, then SBA may initiate a protest pursuant to § 127.600, to suspend award of the contract for 15 business days pending SBA's determination of the concern's eligibility.

(b) *EDWOSB or WOSB protests.* An EDWOSB or WOSB status protest provides a mechanism for challenging or verifying the EDWOSB or WOSB eligibility of a concern in connection with a specific EDWOSB or WOSB requirement. SBA will process EDWOSB or WOSB protests in accordance with the procedures and timeframe set forth in subpart F, and will determine the EDWOSB or WOSB eligibility of the protested concern as of the date the concern represented its EDWOSB or WOSB status as part of its initial offer including price. SBA's protest determination will apply to the specific procurement to which the protest relates and to future procurements.

§ 127.402 How will SBA conduct an examination?

(a) *Notification.* No less than 5 business days before commencing an examination, SBA will notify the concern in writing that it will conduct an examination to determine the status of the concern as an EDWOSB or WOSB. The notification also will advise the concern that its EDWOSB or WOSB eligibility will be determined based on the status of the concern on the date of the notification.

(b) *Request for information.* SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information.

§ 127.403 What happens if SBA verifies the concern's eligibility?

If SBA verifies that the concern satisfies the applicable EDWOSB or WOSB eligibility requirements at the time of the eligibility examination, then the D/GC will send the concern a

written decision to that effect and will allow the concern's EDWOSB or WOSB designation in CCR and ORCA to stand.

§ 127.404 What happens if SBA is unable to verify a concern's eligibility?

(a) *Notice of proposed determination of ineligibility.* If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB at the time of the examination, then the D/GC will send the concern a written notice explaining the reasons SBA believes the concern does not qualify as an EDWOSB or WOSB. The notice will advise the concern that it has 15 calendar days from the date it receives the notice to respond.

(b) *SBA determination.* Following the 15-day response period, the D/GC or designee will consider the reasons of proposed ineligibility and any information the concern submitted in response, and will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If SBA verifies that the concern qualifies as an EDWOSB or WOSB at the time of the examination, then the D/GC will send the concern a decision to that effect and will allow the concern to continue to self-certify its EDWOSB or WOSB status.

(2) If SBA determines that the concern does not qualify as an EDWOSB or WOSB, then the D/GC will send the concern a written decision explaining the basis of ineligibility, and will require that the concern remove its EDWOSB or WOSB designation in the CCR and ORCA within five business days after the date of the decision.

§ 127.405 What is the process for requesting an eligibility examination?

(a) *General.* A concern may request that SBA conduct an examination to verify its eligibility as an EDWOSB or WOSB at any time after it is determined by SBA or an SBA-approved certifier not to qualify as an EDWOSB or WOSB, if the concern believes in good faith that it satisfies all of the EDWOSB or WOSB eligibility requirements under subpart B of this part.

(b) *Format.* The request for an examination must be in writing and must specify the particular reasons the concern was determined not to qualify as an EDWOSB or WOSB.

(c) *Submission of request.* The concern must submit its request directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, marked ''Attn: Request for Women-Owned Small Business Procedures Examination.''

(d) *Notice of receipt of request.* SBA will immediately notify the concern in writing once SBA receives its request for an examination. The notification will advise the concern that its eligibility will be determined based on the status of the concern on the date of the notification. SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility and may draw an adverse inference if the concern fails to cooperate in providing the requested information.

(e) *Determination of eligibility.* The D/GC will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If the D/GC determines that the concern does not qualify as an EDWOSB or WOSB, the decision will explain the specific reasons for the adverse determination and advise the concern that it is prohibited from self-certifying as an EDWOSB or WOSB. If the concern self-certifies as an EDWOSB or WOSB notwithstanding SBA's adverse determination, the concern will be subject to the penalties under subpart F of this part.

(2) If the D/GC determines that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written decision to that effect and will advise the concern that it may self-certify as an EDWOSB or WOSB, as applicable.

(f) *Effect of decision.* The D/GC's decision is effective as of the date of the decision and applies to all solicitations issued on or after the effective date.

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition under this part?

A contracting officer may restrict competition under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement, as specified in § 127.501(a), and the procuring agency finds, pursuant to the method specified in § 127.501(b), that a set-aside in that industry would be consistent with the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

§ 127.501 How will SBA and the agencies determine the industries that are eligible for EDWOSB or WOSB requirements?

(a) *SBA determination of underrepresented or substantially underrepresented industries.*

(1) Approximately every five years, SBA will conduct a study to identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal contracting. The study will include an analysis of the extent of disparity of WOSBs in Federal contracting.

(2) *Data collection.* In determining the extent of disparity of WOSBs in Federal contracting, SBA may request that the head of any Federal department or agency provide SBA, or other designated entity, data or information necessary to analyze the extent of disparity of WOSBs in Federal contracting.

(3) Based upon its analysis, SBA will designate by 4-digit NAICS Industry Subsector industries in which WOSBs are underrepresented or substantially underrepresented.

(b) *Agency determination of discrimination.* Each agency that is considering restricting competition with respect to a contract in an industry pursuant to this rule is responsible for carrying out a relevant analysis that would justify a restriction on competition under the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution. Where an agency seeks to reserve a procurement for competition exclusively among WOSBs or EDWOSBs within an industry designated by SBA in paragraph (a)(3) of this section, the agency must conduct an appropriate analysis of the agency's procurement history and make a determination of whether there is evidence of relevant discrimination in that industry by that agency.

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site a list of 4-digit NAICS Industry Subsector industries it designates under § 127.501(a). The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) *EDWOSB requirements.* For requirements in industries designated by SBA pursuant to § 127.501, a contracting officer may restrict competition to EDWOSBs if the

contracting officer has a reasonable expectation based on market research that:

(1) Two or more EDWOSBs will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or $3,000,000, in the case of all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(b) *WOSB requirements*. If market research indicates that the criteria in paragraph (a) are not met for restricting competition to EDWOSBs, then the contracting officer may restrict competition to WOSBs if:

(1) The requirement is in an industry that SBA has designated as substantially underrepresented with respect to WOSBs; and

(2) The contracting officer has a reasonable expectation based on market research that—

(i) Two or more WOSBs will submit offers;

(ii) The anticipated award price of the contract (including options) will not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing, or $3,000,000 in the case of all other contracts; and

(iii) Contract award may be made at a fair and reasonable price.

(c) *8(a) BD requirements*. A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(d) *Contract file*. When restricting competition to WOSBs in accordance with § 127.503(b), the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as a substantially underrepresented industry with respect to WOSBs.

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations and certifications on ORCA are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

(a) It is small under the size standard corresponding to the NAICS code assigned to the contract;

(b) It is listed on CCR and ORCA as an EDWOSB or WOSB;

(c) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility; and

(d) It will meet the applicable percentages of work requirement as set forth in § 125.6 of this chapter (limitations on subcontracting rule).

§ 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

An EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in § 121.406(b).

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture may submit an offer on an EDWOSB or WOSB contract if the joint venture meets all of the following requirements:

(a) Except as provided in § 121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract;

(b) The EDWOSB or WOSB participant of the joint venture must be designated on the CCR and the ORCA as an EDWOSB or WOSB;

(c) The EDWOSB or WOSB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for the performance of the contract;

(d) The joint venture must perform the applicable percentage of work required of the EDWOSB or WOSB offerors in accordance with § 125.6 of this chapter (limitations on subcontracting rule); and

(e) The EDWOSB or WOSB venturer must perform a significant portion of the contract.

Subpart F—Protests

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

An interested party may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. Any other party or individual may submit information to the contracting officer or SBA in an effort to persuade them to initiate a protest or to persuade SBA to conduct an examination pursuant to subpart D of this part.

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the contracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents credible evidence that the concern is not owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51% owned and controlled by one or more women who are economically disadvantaged.

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format*. Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing*. Protestors may deliver their written protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA.

(c) *Timeliness*. (1) For negotiated acquisitions, an interested party must submit its protest by the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the contracting officer. A

contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA*. The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest*. Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest*. If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

(c) *Notice to protested concern*. If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest within five business days from the date of the notice; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination*. SBA will determine the EDWOSB or WOSB status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract or begin performance after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(e) *Notification of determination*. SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation on the CCR and ORCA as an EDWOSB or WOSB, as appropriate.

(f) *Effect of determination*. SBA's determination is effective immediately and is final unless overturned by OHA on appeal pursuant to § 127.605 of this part.

(1) The purpose of the protest process is to ensure that contracts are awarded to, and performed by, eligible WOSB and EDWOSB concerns. A contracting officer shall not award a contract to an ineligible concern, and shall not authorize an ineligible concern to begin performance.

(2) Where award was made and performance commenced before receipt of a negative final agency decision, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(3) Whether or not a contracting officer decides to not allow an ineligible concern to fully perform a contract under paragraph (f)(2) of this section or under § 134.704 of this title, the contracting officer cannot count the award as one to an EDWOSB or WOSB and must update the Federal Procurement Data System–Next Generation (FPDS–NG) and other databases from the date of award accordingly.

(4) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB on another procurement until it cures the reason for its ineligibility. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in § 127.405.

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with the SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What penalties may be imposed under this part?

Persons or concerns that falsely self-certify or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, subpart 9.4 of title 48 of the Code of Federal Regulations;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 8. The Authority citation for 13 CFR continues to read as follows:

Authority: 5 U.S.C. 504, 15 U.S.C. 632, 634(b)(6), 637(a), 637(m), 648(l), 656(i) and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart A—General Rules

■ 9. Amend § 134.102 by redesignating paragraph (s) as paragraph (t) and adding new paragraph (s) to read as follows:

§ 134.102 Jurisdiction of OHA

* * * * *

(s) Appeals from Women-Owned Small Business or Economically-Disadvantaged Women-Owned Small Business protest determinations under Part 127 of this chapter;

* * * * *

Subpart E—Rules of Practice for Appeals from Service-Disabled Veteran Owned Small Business Concern Protests

■ 10. Amend § 134.515 by revising paragraph (b) to read as follows:

§ 134.515 What are the effects of the Judge's decision?

* * * * *

(b) The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

* * * * *

■ 11. Add new subpart G to read as follows:

Subpart G—Rules of Practice for Appeals From Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

134.701 What is the scope of the rules in this subpart G?
134.702 Who may appeal?
134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?
134.704 What are the effects of the appeal on the procurement at issue?
134.705 What are the requirements for an appeal petition?
134.706 What are the service and filing requirements?
134.707 When does the D/GC transmit the protest file and to whom?
134.708 What is the standard of review?
134.709 When will a Judge dismiss an appeal?
134.710 Who can file a response to an appeal petition and when must such a response be filed?
134.711 Will the Judge permit discovery and oral hearings?
134.712 What are the limitations on new evidence?
134.713 When is the record closed?
134.714 When must the Judge issue his or her decision?
134.715 Can a Judge reconsider his decision?

Subpart G—Rules of Practice for Appeals From Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

§ 134.701 What is the scope of the rules in this subpart G?

(a) The rules of practice in this subpart G apply to all appeals to OHA from formal protest determinations made by the Director for Government Contracting (D/GC) in connection with a Women-Owned Small Business (WOSB) or Economically Disadvantaged WOSB (EDWOSB) status protest issued pursuant to part 127 of this chapter. Appeals under this subpart include issues related to whether the concern is owned and controlled by one or more women who are United States citizens and, if the appeal is in connection with an EDWOSB contract, that the concern is at least 51% owned and controlled by one or more women who are economically disadvantaged. This includes appeals from determinations by the D/GC that the protest was premature, untimely, nonspecific, or not based upon protestable allegations.

(b) Except where inconsistent with this subpart, the provisions of Subpart A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

§ 134.702 Who may appeal?

Appeals from WOSB or EDWOSB protest determinations may be filed with OHA by the protested concern, the protestor, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?

Appeals from a WOSB or EDWOSB protest determination must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the WOSB or EDWOSB protest determination (see § 134.204 for filing and service requirements). An untimely appeal will be dismissed.

§ 134.704 What are the effects of the appeal on the procurement at issue?

Appellate decisions apply to the procurement in question. If the contracting officer awarded the contract to a concern that OHA finds to be ineligible, then the contracting officer may terminate the contract, not exercise any options, or not award further task or delivery orders.

§ 134.705 What are the requirements for an appeal petition?

(a) *Format.* There is no required format for an appeal petition. However, it must include the following information:

(1) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(2) A statement that the petitioner is appealing a WOSB or EDWOSB protest determination issued by the D/GC and the date that the petitioner received it;

(3) A full and specific statement as to why the WOSB or EDWOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation; and

(4) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve the appeal petition upon each of the following:

(1) The D/GC at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile (202) 205–6390;

(2) The contracting officer responsible for the procurement affected by a WOSB or EDWOSB determination;

(3) The protested concern (the business concern whose WOSB or EDWOSB status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile number (202) 205–6873.

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.706 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.707 When does the D/GC transmit the protest file and to whom?

Upon receipt of an appeal petition, the D/GC will send to OHA a copy of the protest file relating to that determination. The D/GC will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

§ 134.708 What is the standard of review?

The standard of review for an appeal of a WOSB or EDWOSB protest

determination is whether the D/GC's determination was based on clear error of fact or law.

§ 134.709 When will a Judge dismiss an appeal?

(a) The presiding Judge will dismiss the appeal if the appeal is untimely filed under § 134.703.

(b) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters. However, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.710 Who can file a response to an appeal petition and when must such a response be filed?

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

§ 134.711 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted, and oral hearings will not be held.

§ 134.712 What are the limitations on new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

§ 134.713 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.710.

§ 134.714 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

§ 134.715 Can a Judge reconsider his decision?

(a) The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new WOSB or EDWOSB determination.

Sandy Baruah,

Acting Administrator.

[FR Doc. E8–23138 Filed 9–26–08; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0149; Directorate Identifier 2007–NM–319–AD; Amendment 39–15651; AD 2008–17–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires replacing the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting. This AD results from a report of a separated hose assembly for the passenger water system. We are issuing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

DATES: This AD is effective November 5, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2008.

ADDRESSES: 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on February 8, 2008 (73 FR 7488). That NPRM proposed to require replacing the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply. The replacement is a new straight hose assembly and a separate 90-degree elbow fitting.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the four commenters.

Support for the NPRM

Boeing concurs with the contents of the proposed rule. Air Transport Association, on behalf of its member, United Airlines (UA), states that UA supports the proposed rule as drafted.

Margie Tillotson, a private citizen, has no objections to the NPRM.

Requests To Address Parts Manufacturer Approval (PMA) Parts

Aviation Data Research (ADR) and Modification and Replacement Parts Association (MARPA), make several comments related to PMA parts. ADR and MARPA state that the NPRM should be modified to embrace PMA alternatives to the original equipment

manufacturer (OEM) part numbers listed in Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007 (which we cited as the appropriate source of service information for accomplishing the proposed actions). ADR states that two parts could conceivably be affected by the design problems underlying the proposed action: In 1992 Parker Hannifin obtained a PMA on part number (P/N) 3112002–139 by licensure to produce a replacement part for P/N 10–60871–139; in 1996 Crane Resistoflex obtained a PMA on P/N R 23582–0366 by licensure to produce a replacement part for P/N 10–60871–125.

ADR points out that under the wording of the NPRM, these parts, which presumably suffer the same defects as the OEM part, can be installed in place of the OEM parts. In contrast, MARPA states that it would appear that installation of PMA alternatives is forbidden, and that it is presumptuous to assume that the PMA alternatives are likely to be defective. ADR and MARPA request that the NPRM be revised to cover possible defective PMA alternative parts. MARPA adds that the AD should explicitly permit the installation of other FAA-approved replacement or modification parts. In addition, ADR states that there should be procedures ''within all AD writing units'' to perform PMA research any time a particular part number is affected by a discovered defect.

The FAA recognizes the need for standardization of issues related to PMA parts to which the commenter refers, and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

We have evaluated the PMA part numbers to which the commenter refers. As a point of clarification, the part numbers that the commenter mentions, Boeing P/N 10–60871–139 (PMA replacement P/N 3112002–139) and Boeing P/N 10–60871–125 (PMA replacement P/N R 23582–0366), are replaced only at the location affected by the AD because of a change in design for that location. (These parts may be installed at other locations, and the continued use of these parts at those locations is acceptable.) We have found that Stratoflex makes replacements for both P/N 10–60871–139 and P/N 10–60871–125. Stratoflex (originally Crane Resistoflex) P/N 23582–0366, which is a replacement for Boeing P/N 10–60871–125, is not in production but some of these parts may be installed at the location affected by this AD. PMA P/N 3112002–139 and PMA P/N R 23582–0366 are marked with both the Boeing part number and the PMA part number. Therefore, the requirements of the AD apply to these PMA parts and the PMA parts must be removed from service at the location affected by the AD. No change has been made to the final rule in this regard.

Request To Make Service Information Publicly Available

MARPA points out that, since Boeing Alert Service Bulletin 737–38A1054 is not on the public record, it does not seem to meet the criteria for incorporation by reference, in which the document must be reasonably available to and usable by the persons affected by the publication. MARPA states that the regulated industry has repeatedly complained about unavailability of service information.

We infer that MARPA would like us to make Boeing service information available online. We are currently in the process of reviewing issues surrounding the posting of service bulletins online as part of an online AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. In the meantime, these documents are available for public review at the locations specified in paragraph (i)(3) of this AD. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR. No change to the final rule is necessary in response to this comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 779 airplanes of U.S. registry. We also estimate that it takes between 4 and 7 work-hours per airplane to comply with this AD, depending on the airplane configuration. The average labor rate is $80 per work-hour. Required parts cost about $400 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be between $560,880 and $747,840, or between $720 and $960 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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–17–13 Boeing: Amendment 39–15651. Docket No. FAA–2008–0149; Directorate Identifier 2007–NM–319–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 5, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007.

Unsafe Condition

(d) This AD results from a report of a separated hose assembly for the passenger water system. We are issuing this AD to prevent a water leak into the flight deck ceiling, which could result in an electrical short and possible loss of several functions essential to safe flight.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Replacement

(f) Within 60 months after the effective date of this AD, replace the existing straight-to-90-degree hose assembly for the Lavatory ''A'' water supply with a new straight hose assembly and a separate 90-degree elbow fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007.

Parts Installation

(g) As of the effective date of this AD, any hose assembly part having a part number identified in Table 1 of this AD must not be used in any location that is subject to the requirements of this AD. However, those parts may be used in other locations if not otherwise prohibited.

TABLE 1—SPARE PARTS PROHIBITED FOR THIS AD

Airplane group identified in Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007	Existing part number(s)
1 and 2	10–61998–430, AS4471–08–0401, or AS4471–08–0404.
3	10–61998–25 or 10–60871–125.
4	10–61998–31 or 10–60871–139.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; 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.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 737–38A1054, dated August 23, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 6, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22649 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0947; Directorate Identifier 2008–NM–154–AD; Amendment 39–15670; AD 2008–19–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires repetitive external detailed inspections or non-destructive inspections to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R, between station (STA) 400 and STA 460, and repair if necessary. This AD results from reports of cracks in the fuselage skin common to stringer S–1 and between STA 400 and STA 460. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

DATES: This AD is effective October 16, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 16, 2008.

We must receive comments on this AD by December 1, 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 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We received three reports of cracks in the fuselage skin common to stringer S–1 and between station (STA) 400 and STA 460. In all three cases, there were cracks in adjacent 10-inch tear strap bays. In one case, there were cracks in four adjacent 10-inch tear strap bays. The cracks measured between 4.0 and 10.5 inches long. The airplanes had accumulated between 42,038 and 57,523 total flight cycles. Analysis indicates that the cracks were caused by fatigue due to high tension stresses and local bending at the edge of the chem-mill pockets of the bonded fuselage skin. Airplanes with 20-inch tear strap bays are also susceptible to cracks at this location. Fatigue cracking of the fuselage skin panels at the chem-mill steps, if not detected and corrected, could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1293, dated August 13, 2008. The service bulletin describes procedures for repetitive external detailed inspections or non-destructive inspections (NDI) to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R between STA 400 and STA 460, and contacting Boeing for repair instructions. The NDI inspections that can be used are medium frequency eddy current, magneto optical imaging, or c-scan. For the initial inspection, the service bulletin specifies a compliance time of before 35,000 total flight cycles, or within 500 flight cycles after the date on the service bulletin, whichever occurs later. For the repetitive inspections, the service bulletin specifies repeat intervals ranging between 1,200 and 4,500 flight cycles, depending on the airplane configuration and the type of inspection previously done.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the AD and the Service Information.''

Difference Between the AD and the Service Information

Boeing Alert Service Bulletin 737–53A1293, dated August 13, 2008, specifies contacting the manufacturer for instructions on how to repair a certain condition, but this AD requires repairing that condition 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.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the structural integrity of the fuselage and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0947; Directorate Identifier 2008–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–19–03 Boeing: Amendment 39–15670. Docket No. FAA–2008–0947; Directorate Identifier 2008–NM–154–AD.

Effective Date

(a) This airworthiness directive (AD) is effective October 16, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1293, dated August 13, 2008.

Unsafe Condition

(d) This AD results from reports of cracks in the fuselage skin common to stringer S–1 and between station (STA) 400 and STA 460. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-mill steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Repetitive Inspections

(f) At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1293, dated August 13, 2008 (hereafter ''the service bulletin''); except where 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: Do repetitive external detailed inspections or non-destructive inspections (NDI) to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2R, between STA 400 and STA 460, by accomplishing the applicable inspections specified in the Accomplishment Instructions of the service bulletin.

Repair

(g) If any crack is found during any inspection required by paragraph (f) of this AD, before further flight, repair the cracked fuselage skin using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; 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.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 737–53A1293, dated August 13, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 11, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22755 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29227; Directorate Identifier 2007–NM–100–AD; Amendment 39–15664; AD 2008–18–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. For certain airplanes, this AD requires a material type inspection to determine if the lower forward corner reveal of the number 3 main entry doors (MEDs) is a casting. If the reveals are castings, this AD requires repetitive inspections of the reveals for cracking, and corrective action if necessary. If the reveals are not castings, this AD requires a detailed inspection of the reveals for a sharp edge and repetitive inspections of the reveals for cracking, and corrective action if necessary. For certain other airplanes, this AD requires only a detailed inspection of the reveals for a sharp edge and repetitive inspections of the reveals for cracking, and corrective action if necessary. For certain other airplanes, this AD requires repetitive inspections of the reveals for cracking only, and corrective action if necessary. This AD also allows a certain replacement as an optional action for the material type inspection for certain airplanes. This AD results from reports of cracking and/or a sharp edge in the lower forward corner reveal of the number 3 MEDs. We are issuing this AD to detect and correct fatigue cracking of the lower forward corner reveal of the number 3 MEDs, which could lead to the door escape slide departing the airplane when the door is opened and the slide is deployed, and consequent

injuries to passengers and crew using the door escape slide during an emergency evacuation.

DATES: This AD is effective November 5, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2008.

ADDRESSES: 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That supplemental NPRM was published in the **Federal Register** on May 22, 2008 (73 FR 29716). For certain airplanes, that supplemental NPRM proposed to require a material type inspection to determine if the lower forward corner reveal of the number 3 main entry doors (MEDs) is a casting. If the reveals are castings, that supplemental NPRM proposed to require repetitive inspections of the reveals for cracking, and corrective action if necessary. If the reveals are not castings, that supplemental NPRM proposed to require a detailed inspection of the reveals for a sharp edge and repetitive inspections of the reveals for cracking, and corrective action if necessary. For certain other airplanes, that supplemental NPRM proposed to require only a detailed inspection of the reveals for a sharp edge and repetitive inspections of the reveals for cracking, and corrective action if necessary. For certain other airplanes, that supplemental NPRM proposed to require repetitive inspections of the reveals for cracking only, and corrective action if necessary. That supplemental NPRM also proposed to allow a certain replacement as an optional action for the material type inspection for certain airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Support for the Supplemental NPRM

Boeing concurs with the supplemental NPRM.

Request To Revise Costs of Compliance

Northwest Airlines (NWA) requests that we revise the Costs of Compliance section in the supplemental NPRM. NWA points out that Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007 (which we referred to in the supplemental NPRM as the appropriate source of service information for doing the actions) specifies 11 hours to perform the inspection. NWA also states that it plans 8 hours to perform the inspection per doorway or 16 hours to perform the inspection per airplane.

We disagree with the request to revise the Cost of Compliance section. The 11 hours estimate specified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, includes time to open and close access. The four-hour estimate specified in this AD represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 715 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections	4	$80	$320, per inspection cycle	119	$38,080, 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

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–18–07 Boeing: Amendment 39–15664. Docket No. FAA–2007–29227; Directorate Identifier 2007–NM–100–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 5, 2008.

Affected ADs

(b) Certain requirements of this AD terminate certain requirements of AD 2007–12–11, amendment 39–15089.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007, except airplanes that have been converted to an all-cargo configuration. The requirements of this AD also become applicable at the time when a converted airplane operating in an all-cargo configuration is converted back to a passenger or passenger/cargo configuration.

Unsafe Condition

(d) This AD results from reports of cracking and/or a sharp edge in the lower forward corner reveal of the number 3 main entry doors (MEDs). We are issuing this AD to detect and correct fatigue cracking of the lower forward corner reveal of the number 3 MEDs, which could lead to the door escape slide departing the airplane when the door is opened and the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

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.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007.

Actions for Group 3 Airplanes

(g) For airplanes identified as Group 3 airplanes in the service bulletin: Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection for cracking of the lower forward corner reveals in accordance with Part 8 of the service bulletin.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

Note 1: For the purpose of this AD, a one-piece machined aluminum reveal may be reworked into a two-piece reveal in accordance with Part 7 of the service bulletin after it was verified to be crack free and without a sharp edge in accordance with Part 5 of the service bulletin, or after it was confirmed to be crack free in accordance with Part 5 of the service bulletin and reworked to remove a sharp edge in accordance with Part 6 of the service bulletin.

(2) If cracking is found, do the replacement specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Before further flight, replace the reveal with a new or reworked two-piece reveal in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(ii) Before further flight, replace the reveal with a new or reworked one-piece machined aluminum reveal without a sharp edge in accordance with Part 3 of the service bulletin. Before the accumulation of 10,000 flight cycles on the replacement reveal since new, do the inspection for cracking specified in Part 8 of the service bulletin and repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. If any cracking is found during any inspection required by this paragraph, before further flight, do the action specified in paragraph (g)(2) of this AD. No further action is required by this paragraph for that location only after the replacement with a two-piece reveal.

Note 2: For the purpose of this AD, a one-piece machined aluminum reveal with a sharp edge may be reworked into a one-piece machined aluminum reveal without a sharp edge in accordance with Part 6 of the service bulletin after it is confirmed to be crack free in accordance with Part 5 of the service bulletin. After the sharp edge is removed, the one-piece machined aluminum reveal without a sharp edge may be further reworked into a two-piece reveal in accordance with Part 7 of the service bulletin.

Actions for Group 2 Airplanes and Group 1, Configuration 2 Airplanes

(h) For airplanes identified as Group 2 airplanes in the service bulletin: Before the accumulation of 1,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do the inspection specified in paragraph (j) of this AD.

(i) For airplanes identified as Group 1, Configuration 2 airplanes in the service bulletin: Within 1,500 flight cycles after the lower forward corner reveal was last replaced or 1,000 flight cycles after the effective date of this AD, whichever occurs later, do the inspection specified in paragraph (j) of this AD.

(j) At the applicable times specified in paragraphs (h) and (i) of this AD: Do a detailed inspection of the lower forward corner reveals for cracking and a sharp edge in accordance with Part 5 of the service bulletin.

(1) If no cracking and no sharp edge are found, before the accumulation of 10,000 flight cycles on the lower forward corner reveal since new, or within 6,000 flight cycles after doing the inspection required by paragraph (j) of this AD, whichever occurs later, do the detailed inspection for cracking in accordance with Part 8 of the service bulletin and inspect thereafter at intervals not to exceed 6,000 flight cycles, until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. If any cracking is found during any inspection required by this paragraph, before further flight, do the action specified in paragraph (j)(3) of this AD. No further action is required by this paragraph for that location only after the replacement with a two-piece reveal.

(2) If no cracking is found but a sharp edge is found, do the action specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) Before further flight, replace the lower forward corner reveal with a new or reworked two-piece reveal, in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(ii) Before further flight, replace the reveal with a new or reworked one-piece machined aluminum reveal without a sharp edge, in accordance with Part 3 of the service

bulletin. Before the accumulation of 10,000 flight cycles on the replacement reveal since new, do the inspection for cracking in accordance with Part 8 of the service bulletin and inspect thereafter at intervals not to exceed 6,000 flight cycles, until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. If any cracking is found during any inspection required by this paragraph, before further flight, do the action required by paragraph (j)(3) of this AD. No further action is required by this paragraph for that location only after the replacement with a two-piece reveal.

(3) If cracking is found, do the action specified in paragraph (j)(3)(i) or (j)(3)(ii) of this AD.

(i) Before further flight, replace the reveal with a new or reworked two-piece reveal, in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(ii) Before further flight, replace the lower forward corner reveal with a new or reworked one-piece machined aluminum reveal without a sharp edge, in accordance with Part 3 of the service bulletin. Before the accumulation of 10,000 flight cycles on the replacement reveal since new, do the inspection for cracking in accordance with Part 8 of the service bulletin and inspect thereafter at intervals not to exceed 6,000 flight cycles, until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. If any cracking is found during any inspection required by this paragraph, before further flight, do the action required by paragraph (j)(3) of this AD. No further action is required by this paragraph for that location only after the replacement with a two-piece reveal.

Actions for Group 1, Configuration 1 Airplanes

(k) For airplanes identified as Group 1, Configuration 1 airplanes in the service bulletin: Before the accumulation of 1,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a material type inspection to determine if the lower forward corner reveals are castings, in accordance with the service bulletin. As an alternative to the material type inspection, replacing a reveal with a new or reworked two-piece lower forward corner reveal in accordance with Part 2 of the service bulletin is terminating action for the requirements of this paragraph for that location only.

(1) *If the forward corner reveal is not a casting:* Before further flight, do the actions specified in paragraph (j) of this AD except for the inspection for a sharp edge.

(2) *If the forward corner reveal is a casting:* Before the accumulation of 7,000 total flight cycles, within 2,000 flight cycles after the effective date of this AD, or within 3,000 flight cycles since the forward corner reveal was inspected in accordance with Boeing Service Bulletin 747–53A2378, whichever is latest, do a detailed inspection for cracking of the lower forward corner reveal, in accordance with Part 1 of Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007.

(i) *If no cracking is found:* Repeat the inspection specified in paragraph (k)(2) of this AD thereafter at intervals not to exceed 3,000 flight cycles until a new or reworked two-piece lower forward corner reveal is installed in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(ii) *If cracking is found:* Do the actions specified in paragraph (k)(2)(ii)(A), (k)(2)(ii)(B), or (k)(2)(ii)(C) of this AD.

(A) Before further flight, weld repair the reveal in accordance with Part 4 of the service bulletin. Repeat the inspection specified in paragraph (k)(2) of this AD thereafter at intervals not to exceed 3,000 flight cycles until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(B) Before further flight, replace the reveal with a new or reworked two-piece reveal, in accordance with Part 2 of the service bulletin. No further action is required by this paragraph for that location only after the replacement.

(C) Before further flight, replace the reveal with a new or reworked one-piece machined aluminum reveal without a sharp edge, in accordance with Part 3 of the service bulletin. Before the accumulation of 10,000 flight cycles on the replacement reveal since new, do the inspection for cracking in accordance with Part 8 of the service bulletin and inspect thereafter at intervals not to exceed 6,000 flight cycles, until a new or reworked two-piece reveal is installed in accordance with Part 2 of the service bulletin. If any cracking is found during any inspection required by this paragraph, before further flight, do the action required by paragraph (k)(2)(ii)(B) or (k)(2)(ii)(C) of this AD. No further action is required by this paragraph for that location only after the replacement with a two-piece reveal.

Operator's Equivalent Procedure

(l) Although Step 5 of Figure 8 of the service bulletin specifies that operators may accomplish the actions in accordance with ''an operator's equivalent procedure,'' this AD requires operators to accomplish Step 5 of Figure 8 in accordance with only the procedures specified in Boeing Standard Overhaul Practices Manual (SOPM) 20–20–02 as given in the service bulletin. An ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance in accordance with paragraph (p) of this AD.

Compliance With AD 2007–12–11, Amendment 39–15089, for MED 3 Only

(m) Accomplishment of the applicable repair required by this AD constitutes compliance with the repair of the lower forward corner casting (reveal) of the number 3 MEDs only, as required by paragraph (q)(2)(ii) of AD 2007–12–11 (which specifies the actions be done in accordance with Boeing Service Bulletin 747–53A2378, Revision 1, dated March 10, 1994; or Boeing Service Bulletin 747–53A2378, Revision 3, dated August 11, 2005). Accomplishment of the actions of this AD does not terminate the remaining requirements of AD 2007–12–11.

Parts Installation

(n) As of the effective date of this AD, no person may install a door lower forward corner reveal made of cast 356 aluminum on any airplane at a location specified by this AD.

(o) As of the effective date of this AD, no person may install a door lower forward corner reveal made of machined 6061 aluminum on any airplane at a location specified by this AD, unless it has been confirmed/reworked to be without a sharp edge in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; 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.

Material Incorporated by Reference

(q) You must use Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 20, 2008.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–20091 Filed 9–30–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 762 and 774

[Docket No. 071204798–81254–01]

RIN 0694–AC17

De Minimis U.S. Content in Foreign Made Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule.

SUMMARY: The Department of Commerce is revising the provisions of the Export Administration Regulations (EAR) that pertain to foreign-made items that incorporate controlled U.S.-origin items, *i.e.*, the EAR's ''*de minimis*'' rules. This rule amends the EAR to change the *de minimis* calculation for foreign produced hardware that is bundled with U.S.-origin software. This rule also clarifies the definition of 'incorporate' as it is applied to the *de minimis* rules and to the medical statement of understanding. This rule also removes the requirement to submit a one-time report to the Bureau of Industry and Security for foreign-made software that incorporates U.S.-origin software. In addition, this rule revises the ''Steps for Using the EAR'' and General Prohibition Two with regard to the *de minimis* rules in order to reduce redundancies in the EAR and harmonize the provisions with other revisions made by this rule.

DATES: This rule is effective: October 1, 2008. Comments must be received by December 1, 2008.

ADDRESSES: Comments on this rule may be submitted to the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the instructions for submitting comments), by e-mail directly to BIS at *publiccomments@bis.doc.gov* (refer to regulatory identification number 0694–AC17 in the subject line), by fax at (202) 482–3355, or on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694–AC17 in all comments.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or *E-mail: scook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The term ''*de minimis*'' generally refers to matters that are of minor significance. The *de minimis* provisions of the EAR promote U.S. export control objectives as set forth in the Export Administration Act of 1979, as amended, while limiting U.S. jurisdiction over non-U.S. products containing a *de minimis* percentage, by value, of sensitive U.S. components. To prevent the diversion of controlled U.S. items and foreign made items incorporating a significant amount of U.S.-origin controlled content, a foreign-made item that contains more than the *de minimis* amount of controlled U.S.-origin content value is subject to the EAR, *i.e.*, a license may be required from BIS for the export abroad to another foreign country or in-country transfer of the foreign-made item. Prior to March 1987, the EAR set no *de minimis* levels for U.S. content in foreign made items; foreign-made items were subject to the EAR if they contained any amount of U.S.-origin content, no matter how small. A rule published March 23, 1987 (52 FR 9147) revised what were then called the ''parts and components'' provisions to establish thresholds at which the amount of U.S.-origin commodities in foreign-made items would warrant exercise of U.S. jurisdiction over the foreign-made item when located outside the United States. The rule was established to alleviate a major trade dispute with allies who strenuously objected to U.S. assertion of jurisdiction over all reexports of non-U.S. items that contained even trivial amounts of U.S. content. A major revision of the EAR in 1996 (61 FR 12714) introduced the term ''*de minimis*'' and established *de minimis* thresholds for software and technology. The 1996 rule required a one-time report for software and technology, which had to be submitted before reexporters relied on the *de minimis* rules for such items, and it made no provision for the ''incorporation'' of software into commodities. These provisions have not been significantly revised since 1996.

The interested public has consistently expressed concerns about *de minimis* calculations and reporting requirements in requests for advisory opinions, industry meetings, Technical Advisory Committee (TAC) meetings, seminars (especially overseas), and at the annual Bureau of Industry and Security (BIS) Update conference. Both U.S. exporters and the foreign manufacturers who are their customers have said that determining the applicability of the *de minimis* rules is complicated and cumbersome. BIS recognizes that the export control objectives of the *de minimis* rules will be best served if those rules are clarified to facilitate compliance with them.

Accordingly, BIS intends this revision of the EAR to facilitate compliance efforts by foreign manufacturers and respond to both advances in technology and how products are manufactured and sold in practice. Foreign manufacturers incorporating U.S. content must determine their obligations under U.S. export controls, in addition to those of their own countries, in order to prevent the diversion of controlled U.S. items to destinations and end-users that would be inimical to the national security or foreign policy interests of the United States. BIS recognizes that the heavier the compliance burden is, the greater the incentive to purchase content elsewhere. Modifying U.S. rules may reduce the pressure to ''design out'' U.S. origin items from foreign products, and thereby provide significant benefit to U.S. businesses while enabling BIS to continue exercising appropriate jurisdiction over foreign-made items incorporating controlled U.S. content.

Paperwork Reduction Act Collection 0694–0101

This rule revises the title of Supplement No. 1 to part 730, as well as the entry for Paperwork Reduction Act collection number 0694–0101. The title corresponding to collection number 0694–0101 is changed from ''One-Time Report for Foreign Software or Technology Eligible for *De Minimis* Exclusion'' to ''One-Time Report for Foreign Technology Eligible for *De Minimis* Exclusion'', because this rule removes the requirement to submit a one-time report on *de minimis* calculations for foreign software, but retains the requirement for foreign technology. The entry for 0694–0101 in the table is amended by adding Supplement No. 2 to part 734 to the related citation for this collection, because much of the detail about the required report is in Supplement No. 2 to part 734 of the EAR.

Part 732 ''Steps for Using the EAR''

This rule amends § 732.2 ''Steps regarding scope of the EAR'' by revising

paragraph (d) ''Step 4: Foreign-made items incorporating less than the *de minimis* level of U.S.-origin items'' (revised title) and removing and reserving paragraph (e) ''Step 5: Foreign-made items incorporating more than the *de minimis* level of U.S. parts, components, or materials.'' Paragraph (d) is revised to avoid redundancies in the EAR by eliminating instructions, otherwise described in the newly modified Supplement No. 2 to part 734, for calculating the value of U.S.-origin content in a foreign item. Paragraph (d) is also revised to clarify instructions and modernize terminology regarding foreign-made items that incorporate U.S.-origin content. Paragraph (e) is removed and reserved, because Steps 4 and 5 have been combined.

This rule amends § 732.3 ''Steps regarding the ten general prohibitions'' by revising paragraph (e) ''Step 10: Foreign-made items incorporating controlled U.S.-origin items and the *de minimis* rules.'' This paragraph is revised to eliminate instructions, otherwise described in the newly modified Supplement No. 2 to part 734, for determining what constitutes 'controlled' U.S.-origin content. This paragraph also clarifies instructions and modernizes terminology regarding foreign-made items that incorporate more than the *de minimis* level of U.S. content. This section has also been modified to reflect the fact that there are actually two *de minimis* rules described in part 734 of the EAR (rather than a single *de minimis* rule).

Foreign-Made Items That Incorporate Controlled U.S.-Origin Items

This rule amends § 734.3 ''Items subject to the EAR'' by revising paragraph (a)(3) regarding foreign-made items that incorporate controlled U.S.-origin items. The revisions to this section clarify which foreign produced items that incorporate controlled U.S.-origin items are subject to the EAR. This rule clarifies that foreign produced commodities that incorporate controlled U.S.-origin commodities, foreign produced commodities that are 'bundled' with controlled U.S.-origin software, foreign produced software that is commingled with controlled U.S.-origin software, and foreign produced technology that is commingled with controlled U.S.-origin technology are subject to the EAR if the incorporated controlled U.S.-origin content exceeds the *de minimis* levels as defined in § 734.4 of the EAR. Prior to the publication of this rule, the *de minimis* rules in the EAR did not allow U.S.-origin software to be counted as a part of a foreign commodity it was bundled with. Rather, calculations of U.S. content value were required to be performed separately for commodities, software, and technology. This change is in response to the way that systems and software are now being developed and delivered to customers. Furthermore, this change is necessary because software is such an integral part of the system in which the hardware and software work and is generally customized to work with a specific hardware product.

This rule amends § 734.4 of the EAR to clarify the scope of the *de minimis* rules by adding the title ''10% *De Minimis* Rule'' to paragraph (c), and the title ''25% *De Minimis* Rule'' to paragraph (d). These two paragraphs, together with the exceptions they cross-reference, encapsulate the ''*de minimis* rules'' that are referenced elsewhere in the EAR. This rule also amends paragraphs 734.4(c)(3) and 734.4(d)(3) of the EAR to clarify that there is a reporting requirement that must be fulfilled before the *de minimis* rules are relied upon for technology. The details of that reporting requirement are in Supplement No. 2 to part 734 of the EAR. As stated in more detail below, this reporting requirement previously existed for software and technology, but now only exists for technology. This requirement is more properly stated in the text of the *de minimis* rules rather than in the guidelines in Supplement No. 2 to part 734, where it was previously found. This rule also moves a caution regarding the applicability of Department of the Treasury, Office of Foreign Assets Control regulations to certain exports from abroad by persons subject to the jurisdiction of the United States (as defined therein) regardless of the *de minimis* rules in the EAR, from § 732.3 of the EAR to a new subparagraph (a)(5) of § 734.4 of the EAR. This caution is also reworded slightly to adopt the term ''persons subject to the jurisdiction of the United States'', which is a defined term in the Foreign Assets Control Regulations, 31 CFR. 500.329.

In § 734.4 of the EAR, this rule removes paragraph (e) and (h), redesignates paragraphs (f) and (g) as paragraphs (e) and (f), respectively, and adds a new paragraph (g). Paragraph (e) was removed because the provisions in that paragraph were moved to Supplement No. 1 to part 734. Paragraph (h) was removed because the provisions in that paragraph were either moved to other paragraphs, or were otherwise redundant or outdated. The prior restriction on hot section technology that was in paragraph (h) is moved to paragraph (a) and amended to more clearly express BIS's intent with regard to this restriction. This rule also corrects the citation in § 734.4 for hot section technology, which is covered by ECCN 9E003.a.1 through a.11 and .h instead of ECCN 9E003.a.1 through a.12 and .f. The prior *de minimis* restriction on encryption software under ECCN 5D002 in paragraph (h) contradicted the special provisions for this software found in paragraph (b), and was thus outdated. The prior *de minimis* restriction in paragraph (h) concerning encryption technology under ECCN 5E002 repeated the restriction on the same technology in paragraph (a), and was therefore redundant. Only certain encryption items are eligible for *de minimis* treatment, and this rule does not change the scope of eligible encryption items nor the special requirements set forth in § 734.4(b) of the EAR for the application of *de minimis* to those items. As a reminder to the public, § 734.4(b)(1)(iii) of the EAR restricts foreign products that incorporate § 740.17(b)(2) EI software or hardware, or are bundled with § 740.17(b)(2) EI software, from being exported from abroad to E:1 countries (see Supplement No. 1 to part 740 of the EAR). The new paragraph (g) sets forth a recordkeeping requirement for the method used to determine the percentage of U.S. content in foreign software or technology. This change is described in more detail below.

Bundled Software

The amendment to § 734.3 of the EAR described above introduces the concept of 'bundled' software, which will require *de minimis* calculations to include certain software within the calculated value of U.S. origin content in a foreign made commodity. Previously, calculations of U.S. content value were required to be performed separately for commodities, software, and technology. This interim rule will allow foreign made commodities 'bundled' with *de minimis* amounts of U.S. origin software to become not subject to the EAR in many instances.

This rule adds three notes to paragraph (c)(1) and to paragraph (d)(1) of § 734.4 of the EAR. The notes are substantively identical for each paragraph. The first note explains that U.S.-origin software (like hardware components) remains subject to the EAR when exported or reexported separately from (i.e., not incorporated or bundled with) a foreign-made commodity. Exports or reexports of software for additional users and upgrades of the software are considered separate exports or reexports of the software.

The second note explains the meaning of 'bundled'. The term 'bundled' refers to software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity. For instance, printer driver software is generally not incorporated into a printer but is customarily delivered with the printer so that it may be loaded onto the computer to which it will be connected.

The third note provides the scope of software that may be bundled with foreign-made commodities for the purposes of the *de minimis* rules set forth in §§ 734.4(c)(1) and 734.4(d)(1) of the EAR. Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL). Software that is listed on the CCL and does not require a license to the destination of a given foreign-made commodity is not considered ''controlled'' for purposes of the shipment of that commodity and should not be included in *de minimis* calculations for that shipment. Software that does not meet these criteria will not be considered to be 'bundled' with any commodity for purposes of the *de minimis* rules. BIS is limiting bundling for software to that which is controlled for AT reasons because some software controlled for non-proliferation or national security reasons can be used to enhance the capabilities of equipment controlled for the same reasons.

Supplement No. 2 to Part 734—Calculation of Values for *De Minimis* Rules

Supplement No. 2 to part 734 is amended to clarify the guidelines for 'controlled' U.S.-origin content and for determining content values for purposes of the *de minimis* rules. The supplement also is amended to clarify the definition of the term 'incorporate', and remove the reporting requirement for foreign-made software that incorporates a *de minimis* level of controlled U.S.-origin software. Further, this supplement will now be the sole reference point for persons seeking details on how to determine whether their foreign-made item is subject to the EAR on the basis of the *de minimis* rules in § 734.4. Previously, guidance on performing *de minimis* calculations, and specifically on identifying 'controlled' U.S.-origin content, was also contained in part 732 of the EAR.

This rule revises the term 'controlled' for the purpose of determining if the U.S.-origin content value should be counted in the *de minimis* percentage calculation. This explanation is a clarification of BIS's existing interpretation. U.S.-origin content is considered controlled for the purpose of the *de minimis* rules when it requires a license to the intended ultimate country of destination of the foreign-made item. When making this license determination you should only use the Export Control Classification Number (ECCN) based on the Commerce Control List in Supplement No. 1 to part 774 of the EAR, the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR, License Exception GBS (if applicable), and the special controls and embargo provisions in part 746 of the EAR. Note that items classified as EAR99 may be controlled content when going to some destinations. End-user and end-use provisions in part 744 of the EAR are not to be considered when determining if U.S.-origin content in a foreign-made item is controlled. This is because the *de minimis* rules are not intended to identify licensing requirements for the foreign-made item, but rather to identify whether the foreign-made item is subject to the EAR because it contains an amount of U.S. content that is significant not only in value, but also due to its sensitivity with regard to the intended ultimate country of destination. If it is determined the foreign-made item is subject to the EAR because of the percentage of controlled U.S.-origin content it contains, then the relevant provisions of the EAR (including end-use and end-user requirements) must be applied to the foreign-made item to make a license requirement determination.

This rule clarifies the definition of ''incorporated'' to be consistent with common business practices concerning the way equipment and systems are being sold today. In addition, the new definition is consistent with the way that classifications are performed in BIS and the way BIS interprets the export of a commodity. Previously, Supplement No. 2 to part 734 of the EAR stated only that the term ''incorporated'' did not include peripheral or accessory devices that were merely rack mounted with or cable connected into foreign equipment, even though intended for use with products made abroad. Under this new rule, U.S. items are ''incorporated'' when all of the following conditions are met: (1) They are essential to the functioning of the foreign equipment, (2) they are customarily included in the sale of foreign-made items, and (3) they are reexported with the foreign produced item.

This rule removes the one-time reporting requirement for foreign-made software that incorporates controlled U.S.-origin software. From its inception, the one-time report was intended to be a temporary measure to verify that industry understood how to perform the *de minimis* calculation. BIS, as well as the Departments of Defense and State, have reviewed numerous one-time reports for foreign-made software, and have concluded that industry is performing the *de minimis* calculation correctly. Therefore, the one-time reporting requirement for foreign-made software is removed. However, the requirement for one-time reports for foreign-made technology that incorporate controlled U.S.-origin technology will not be removed at this time, because there has not been a sufficient number of these reports to verify that industry is performing these correctly and the scope and value of technology is more difficult to calculate.

As stated above, the recordkeeping requirement for the method by which you determined the percentage of U.S. content in foreign software or technology is moved from Supplement No. 2 to part 734 to a new paragraph (g) in § 734.4 of the EAR, as requirements should be found in the main body related to *de minimis* rather than in the guidance for *de minimis* calculations found in Supplement No. 2 to part 734 of the EAR. The recordkeeping requirement is also more clearly stated, explicitly cross-referencing the EAR's general recordkeeping provision in part 762. In addition, this rule adds a reference to § 734.4(g) in § 762.2(b) because this paragraph lists references to record retention requirements in the EAR.

General Prohibition Two

This rule amends General Prohibition two in part 736 of the EAR by revising the title, harmonizing the text with § 734.4, and clarifying that foreign-made items that incorporate more than the *de minimis* amount of controlled U.S.-origin items are subject to all the provisions of the EAR and not just the license requirements indicated by the ECCN and the Commerce Country Chart. The title of General Prohibition two is amended to revise the parenthetical short title from ''parts and components reexports'' to ''U.S.-content reexports,'' in order to clarify that the *de minimis* rules apply to technology and software reexports, in addition to commodity reexports.

Statement of Understanding—Medical Equipment

This rule amends guidance on the Wassenaar Arrangement statement of understanding on medical equipment in Supplement No. 3 to part 774 by

revising the note defining ''incorporate.'' The revision harmonizes the definition of ''incorporate'' as it relates to U.S. commodities and software incorporated into medical equipment with the definition of ''incorporate'' as it is applied to the *de minimis* rules in part 734 of the EAR. This new definition is consistent with common business practices concerning the way equipment and systems are being sold today.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule has been determined to be not 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 rule involves a collection of information that has been approved by the OMB under control number 0694–0088, ''Multi-Purpose Application,'' 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 rule contains a collection that has been approved by the Office of Management and Budget under control number 0694–0101, which carries a burden hour estimate of 25 hours. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, OMB Desk Officer, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th & Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

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

4. Pursuant to 5 U.S.C. 553(a)(1), this rule is exempt from the provision of the Administrative Procedure Act (5 U.S.C. 553) (APA) requiring notice and an opportunity for public comment because this regulation involves a military and foreign affairs function of the United States. For the same reason, good cause exists to waive the 30-day delay in effectiveness otherwise required by the APA. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Accordingly, no regulatory flexibility analysis is required and none has been prepared. Although notice and opportunity for comment are not required, BIS is issuing this rule in interim final form and is seeking public comments on these revisions. The period for submission of comments will close December 1, 2008. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this interim rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0953 for assistance.

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 732

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Part 736

Exports.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 730, 732, 734, 736, 762 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 continues 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).

Supplement No. 1 to Part 730 [Amended]

■ 2. Supplement No. 1 to part 730 is amended by:

■ a. Revising the title for Collection Number 0694–0101 to read ''One-Time Report For Foreign Technology Eligible For *De Minimis* Exclusion''; and

■ b. Revising the Reference in the EAR for Collection Number 0694–0101 to read ''§ 734.4 and Supp. No. 2 to part 734''.

PART 732—[AMENDED]

■ 3. The authority citation for 15 CFR part 732 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).

■ 4. Section 732.2 is amended by:
■ a. Revising paragraph (d), as set forth below; and
■ b. Removing and reserving paragraph (e).

§ 732.2 Steps Regarding Scope of the EAR.

* * * * *

(d) *Step 4: Foreign-made items incorporating controlled U.S.-origin items.* This step is appropriate only for items that are made outside the United States and not currently located in the United States. Special requirements and restrictions apply to foreign-made items that incorporate U.S.-origin encryption items (see § 734.4(a)(2), (b), and (g) of the EAR).

(1) Determining whether your foreign made item is subject to the EAR. Using the guidance provided in Supplement No. 2 to part 734 of the EAR, determine whether controlled U.S.-origin items are incorporated into the foreign-made item and are above the *de minimis* level set forth in § 734.4 of the EAR.

(2) If no U.S.-origin controlled items are incorporated or if the percentage of incorporated U.S.-origin controlled items are equal to or below the *de minimis* level described in § 734.4 of the EAR, then the foreign-made item is not subject to the EAR by reason of the *de minimis* rules, and you should go on to consider Step 6 regarding the foreign-produced direct product rule.

(3) If the foreign-made item incorporates more than the *de minimis* level of U.S.-origin items, then that item is subject to the EAR and you should skip to Step 7 at § 732.3 of this part and consider the steps regarding all other general prohibitions, license exceptions, and other requirements to determine applicability of these provisions to the foreign-made item.

* * * * *

■ 5. Section 732.3 is amended by revising paragraph (e), to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(e) *Step 10: Foreign-made items incorporating controlled U.S.-origin items and the de minimis rules*— (1) *De minimis rules.* If your foreign-made item abroad is a foreign-made commodity that incorporates controlled U.S.-origin commodities, a foreign-made commodity that is 'bundled' with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology, then it is subject to the EAR if the U.S.-origin controlled content exceeds the *de minimis* levels described in Sec. 734.4 of the EAR.

(2) *Guidance for calculations.* For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note, U.S.-origin technology controlled by ECCN 9E003.a.1 through a.11, and .h, and related controls, and encryption software controlled for ''EI'' reasons under ECCN 5D002 (not eligible for *de minimis* treatment pursuant to § 734.4(b) of the EAR) or encryption technology controlled for ''EI'' reasons under ECCN 5E002 (not eligible for *de minimis* treatment pursuant to § 734.4(a)(2) of the EAR) do not lose their U.S.-origin when redrawn, used, consulted, or otherwise commingled abroad in any respect with other software or technology of any other origin. Therefore, any subsequent or similar software or technology prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or uses any such U.S.-origin software or technology is subject to the EAR.

PART 734—[AMENDED]

■ 6. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 7–8. Section 734.3 is amended by revising paragraph (a)(3) to read as follows:

§ 734.3 Items subject to the EAR.

* * * * *

(a) * * *

(3) Foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are 'bundled' with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, and foreign-made technology that is commingled with controlled U.S.-origin technology:

(i) In any quantity, as described in § 734.4(a) of this part; or

(ii) In quantities exceeding the *de minimis* levels, as described in §§ 734.4(c) or 734.4(d) of this part;

* * * * *

■ 9. Section 734.4 is amended by:
■ a. Adding new paragraphs (a)(4) and (a)(5);
■ b. Revising the introductory text of paragraph (c);
■ c. Revising paragraph (c)(1) and adding notes to paragraph (c)(1);
■ d. Adding a sentence to the end of paragraph (c)(3);
■ e. Revising the introductory text of paragraph (d);
■ f. Revising paragraph (d)(1) and adding notes to paragraph (d)(1); and
■ g. Adding a sentence to the end of paragraph (d)(3);
■ h. Removing paragraph (e);
■ i Redesignating paragraphs (f) and (g) as paragraphs (e) and (f);
■ j. Adding new paragraph (g); and
■ k. Removing paragraph (h).

The revisions and additions read as follows:

§ 734.4 de minimis U.S. content.

(a) * * *

(4) There is no *de minimis* level for U.S.-origin technology controlled by ECCN 9E003a.1 through a.11, and .h. when redrawn, used, consulted, or otherwise commingled abroad.

(5) Under certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de minimis* provisions of the EAR. In addition, the *de minimis* rules do not relieve U.S. persons of the obligation to refrain from supporting the proliferation of weapons of mass-destruction and missiles as provided in § 744.6 of the EAR.

* * * * *

(c) *10% De Minimis Rule.* Except as provided in paragraphs (a) and (b)(1)(iii) of this section and subject to the provisions of paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) of this section, the following reexports are not subject to the EAR when made to any country in the world. See Supplement No. 2 of this part for guidance on calculating values.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities or ''bundled'' with U.S.-origin software valued at 10% or less of the total value of the foreign-made commodity;

NOTES to paragraph (c)(1): (1) U.S.-origin software is not eligible for the *de minimis* exclusion and is subject to the EAR when

exported or reexported separately from (i.e., not bundled or incorporated with) the foreign-made item.

(2) For the purposes of this section, 'bundled' means software that is reexported together with the item and is configured for the item, but is not necessarily physically integrated into the item.

(3) The *de minimis* exclusion under paragraph (c)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is designated as EAR99 (subject to the EAR, but not listed on the CCL). For all other software, an independent assessment of whether the software by itself is subject to the EAR must be performed.

* * * * *

(3) * * * Before you may rely upon the *de minimis* exclusion for foreign-made technology commingled with controlled U.S.-origin technology, you must file a one-time report. See Supplement No. 2 to part 734 for submission requirements.

* * * * *

(d) *25% De Minimis Rule.* Except as provided in paragraph (a) of this section and subject to the provisions of paragraph (b) of this section, the following reexports are not subject to the EAR when made to countries other than those listed in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. See Supplement No. 2 to this part for guidance on calculating values.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities or ''bundled'' with U.S.-origin software valued at 25% or less of the total value of the foreign-made commodity;

NOTES to paragraph (d)(1): (1) U.S.-origin software is not eligible for the *de minimis* exclusion and is subject to the EAR when exported or reexported separately from (i.e., not bundled or incorporated with) the foreign-made item.

(2) For the purposes of this section, ''bundled'' means software that is reexported together with the item and is configured for the item, but is not necessarily physically integrated into the item.

(3) The *de minimis* exclusion under paragraph (d)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is classified as EAR99 (subject to the EAR, but not listed on the CCL). For all other software, an independent assessment of whether the software by itself is subject to the EAR must be performed.

* * * * *

(3) * * * Before you may rely upon the *de minimis* exclusion for foreign-made technology commingled with controlled U.S.-origin technology, you must file a one-time report. See Supplement No. 2 to part 734 for submission requirements.

* * * * *

(g) *Recordkeeping requirement.* The method by which you determined the percentage of U.S. content in foreign software or technology must be documented and retained in your records in accordance with the recordkeeping requirements in part 762 of the EAR. Your records should indicate whether the values you used in your calculations are actual arms-length market prices or prices derived from comparable transactions or costs of production, overhead, and profit.

■ 10. Supplement No. 2 to part 734 is revised to read as follows:

SUPPLEMENT NO. 2 TO PART 734—GUIDELINES FOR *DE MINIMIS* RULES

(a) Calculation of the value of controlled U.S.-origin content in foreign-made items is to be performed for the purposes of § 734.4 of this part, to determine whether the percentage of U.S.-origin content is *de minimis.* (Note that you do not need to make these calculations if the foreign made item does not require a license to the destination in question.) Use the following guidelines to perform such calculations:

(1) *U.S.-origin controlled content.* To identify U.S.-origin controlled content for purposes of the *de minimis* rules, you must determine the Export Control Classification Number (ECCN) of each U.S.-origin item incorporated into a foreign-made product. Then, you must identify which, if any, of those U.S.-origin items would require a license from BIS if they were to be exported or reexported (in the form in which you received them) to the foreign-made product's country of destination. For purposes of identifying U.S.-origin controlled content, you should consult the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR and controls described in part 746 of the EAR. Part 744 of the EAR should not be used to identify controlled U.S. content for purposes of determining the applicability of the *de minimis* rules. In identifying U.S.-origin controlled content, do not take account of commodities, software, or technology that could be exported or reexported to the country of destination without a license (designated as ''NLR'') or under License Exception GBS (see part 740 of the EAR). Commodities subject only to short supply controls are not included in calculating U.S. content.

Note to paragraph (a)(1): U.S.-origin controlled content is considered 'incorporated' for *de minimis* purposes if the U.S.-origin controlled item is: Essential to the functioning of the foreign equipment; customarily included in sales of the foreign equipment; and reexported with the foreign produced item. U.S.-origin software may be 'bundled' with foreign produced commodities; see § 734.4 of this part. For purposes of determining *de minimis* levels, technology and source code used to design or produce foreign-made commodities or software are not considered to be incorporated into such foreign-made commodities or software.

(2) *Value of U.S.-origin controlled content.* The value of the U.S.-origin controlled content shall reflect the fair market price of such content in the market where the foreign product is being produced. In most cases, this value will be the same as the actual cost to the foreign manufacturer of the U.S.-origin commodity, technology, or software. When the foreign manufacturer and the U.S. supplier are affiliated and have special arrangements that result in below-market pricing, the value of the U.S.-origin controlled content should reflect fair market prices that would normally be charged to unaffiliated customers in the same foreign market. If fair market value cannot be determined based upon actual arms-length transaction data for the U.S.-origin controlled content in question, then you must determine another reliable valuation method to calculate or derive the fair market value. Such methods may include the use of comparable market prices or costs of production and distribution. The EAR do not require calculations based upon any one accounting system or U.S. accounting standards. However, the method you use must be consistent with your business practice.

(3) *Foreign-made product value— (i) General.* The value of the foreign-made product shall reflect the fair market price of such product in the market where the foreign product is sold. In most cases, this value will be the same as the actual cost to a buyer of the foreign-made product. When the foreign manufacturer and the buyer of their product are affiliated and have special arrangements that result in below-market pricing, the value of the foreign-made product should reflect fair market prices that would normally be charged to unaffiliated customers in the same foreign market. If fair market value cannot be determined based upon actual arms-length transaction data for the foreign-made product in question, then you must determine another reliable valuation method to calculate or derive the fair market value. Such methods may include the use of comparable market prices or costs of production and distribution. The EAR do not require calculations based upon any one accounting system or U.S. accounting standards. However, the method you use must be consistent with your business practice.

(ii) *Foreign-Made Software.* In calculating the value of foreign-made software for purposes of the *de minimis* rules, you may make an estimate of future sales of that foreign software. The total value of foreign-made software will be the sum of: The value of actual sales of that software based on orders received at the time the foreign software incorporates U.S.-origin content and, if applicable; and an estimate of all future sales of that software.

Note to paragraph (a)(3): Regardless of the accounting systems, standard, or conventions you use in the operation of your business, you may not depreciate reported fair market values or otherwise reduce fair market values

through related accounting conventions. Values may be historic or projected. However, you may rely on projected values only to the extent that they remain consistent with your documentation.

(4) *Calculating percentage value of U.S.-origin items.* To determine the percentage value of U.S-origin controlled content incorporated in, commingled with, or ''bundled'' with the foreign produced item, divide the total value of the U.S.-origin controlled content by the foreign-made item value, then multiply the resulting number times 100. If the percentage value of incorporated U.S.-origin items is equal to or less than the *de minimis* level described in § 734.4 of the EAR, then the foreign-made item is not subject to the EAR.

(b) *One-time report.* As stated in paragraphs (c) and (d) of § 734.4, a one-time report is required before reliance on the *de minimis* rules for technology. The purpose of the report is solely to permit the U.S. Government to evaluate whether U.S. content calculations were performed correctly.

(1) *Contents of report.* You must include in your report a description of the scope and nature of the foreign technology that is the subject of the report and a description of its fair market value, along with the rationale and basis for the valuation of such foreign technology. Your report must indicate the country of destination for the foreign technology reexports when the U.S.-origin controlled content exceeds 10%, so that BIS can evaluate whether the U.S.-origin controlled content was correctly identified based on paragraph (a)(1) of this Supplement. The report does not require information regarding the end-use or end-users of the reexported foreign technology. You must include in your report the name, title, address, telephone number, E-mail address, and facsimile number of the person BIS may contact concerning your report.

(2) *Submission of report.* You must submit your report to BIS using one of the following methods:

(i) E-mail: *rpd2@bis.doc.gov*;

(ii) Fax: (202) 482–3355; or

(iii) Mail or Hand Delivery/Courier: Regulatory Policy Division, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

(3) *Report and wait.* If you have not been contacted by BIS concerning your report within thirty days after filing the report with BIS, you may rely upon the calculations described in the report unless and until BIS contacts you and instructs you otherwise. BIS may contact you with questions concerning your report or to indicate that BIS does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BIS within thirty days after filing the report with BIS, you may not rely upon the calculations described in the report, and may not use the *de minimis* rules for technology that are described in § 734.4 of this part, until BIS has indicated that such calculations were performed correctly.

PART 736—[AMENDED]

■ 11. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; 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. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; 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).

■ 12. Section 736.2 is amended by revising the heading of paragraph (b)(2) and the introductory paragraph to (b)(2)(i) to read as follows:

§ 736.2 General Prohibitions and Determination of Applicability.

* * * * *

(b) * * *

(2) *General Prohibition Two—Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (U.S. Content Reexports).* (i) You may not, without a license or license exception, reexport or export from abroad foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are ''bundled'' with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology if such items require a license according to any of the provisions in the EAR and incorporate or are commingled with more than a *de minimis* amount of controlled U.S. content, as defined in § 734.4 of the EAR concerning the scope of the EAR.

* * * * *

PART 762—[AMENDED]

■ 13. The authority citation for 15 CFR part 762 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).

■ 14. Section 762.2 is amended by:

■ a. Revising paragraphs (b)(44) and (b)(45); and

■ b. Adding a new paragraph (b)(46), to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(44) § 745.2, End-use certificates;

(45) § 758.2(c), Assumption writing; and

(46) § 734.4(g), *de minimis* calculation (method).

* * * * *

PART 774—[AMENDED]

■ 15. The authority citation for 15 CFR part 774 continues 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. 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. 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).

■ 16. Supplement No. 3 to part 774 is amended by revising Note 2 to read as follows:

SUPPLEMENT NO. 3 TO PART 774—STATEMENTS OF UNDERSTANDING

* * * * *

Notes applicable to State of Understanding related to Medical Equipment:

* * * * *

(2) Commodities or software are considered ''incorporated'' if the commodity or software is: Essential to the functioning of the medical equipment; customarily included in the sale of the medical equipment; and exported or reexported with the medical equipment.

* * * * *

Dated: September 25, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–23142 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–064–7013a; A–1–FRL–8719–7]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of Maine that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by Maine and approved by EPA.

DATES: *Effective Date:* This rule is effective on October 1, 2008.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

An electronic copy of the Maine regulations we have approved for incorporation into the SIP are also available by accessing *http://www.epa.gov/ne/topics/air/sips.html*. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460 and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Change of IBR Format
A. Description of a SIP
B. How EPA Enforces the SIP
C. How the State and EPA Update the SIP
D. How EPA Compiles the SIP
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I. Change of IBR Format

This format revision will affect the ''Identification of plan'' section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA); the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA New England Regional Office.

A. Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) and achieve certain other Clean Air Act (Act) requirements (e.g., visibility requirements and prevention of significant deterioration). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network descriptions, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces the SIP

Each SIP revision submitted by Maine must be adopted at the state level after undergoing reasonable notice and opportunity for public comment. SIPs submitted to EPA to attain or maintain the NAAQS must include enforceable emission limitations and other control measures, schedules and timetables for compliance.

EPA evaluates submitted SIPs to determine if they meet the Act's requirements. If a SIP meets the Act's requirements, EPA will approve the SIP. EPA's notice of approval is published in the **Federal Register** and the approval is then codified in the Code of Federal Regulations (CFR) at 40 CFR part 52. Once EPA approves a SIP, it is enforceable by EPA and citizens in Federal district court.

We do not reproduce in 40 CFR part 52 the full text of the Maine regulations that we have approved; instead, we incorporate them by reference (''IBR''). We approve a given state regulation with a specific effective date and then refer the public to the location(s) of the full text version of the state regulation(s) should they want to know which measures are contained in a given SIP (see ''I.F. Where You Can Find a Copy of the SIP Compilation'').

C. How the State and EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations.

On May 22, 1997 (62 FR 27968), EPA announced revised procedures for incorporating by reference federally approved SIPs. The procedures announced included: (1) A new process for incorporating by reference material submitted by states into compilations and a process for updating those compilations on roughly an annual basis; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the compilations and the CFR; and (3) a revised format for the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures.

D. How EPA Compiles the SIP

We have organized into a compilation the federally-approved regulations, source-specific requirements and nonregulatory provisions we have approved into the SIP. We maintain hard copies of the compilation in binders and we primarily update these binders on an annual basis.

E. How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations, part two contains the source-specific requirements that have been approved as part of the SIP (if any), and part three contains nonregulatory provisions that we have approved. Each compilation contains a table of identifying information for each regulation, each source-specific requirement, and each nonregulatory provision. The state effective dates in the tables indicate the date of the most recent revision to a particular regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

F. Where You Can Find a Copy of the SIP Compilation

EPA New England developed and will maintain a hard copy of the compilation for Maine. An electronic copy of the

Maine regulations we have approved are available on the following Web site: *http://www.epa.gov/ne/topics/air/sips.html*. A hard copy of the regulatory and source-specific portions of the compilation will also be maintained at the Air and Radiation Docket and Information Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460; and National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA has revised the organization of the ''Identification of plan'' section in 40 CFR part 52 and included additional information to clarify the elements of the SIP.

The revised Identification of plan section for Maine contains five subsections:

1. Purpose and scope (see 40 CFR 52.1020(a));
2. Incorporation by reference (see 40 CFR 52.1020(b));
3. EPA-approved regulations (see 40 CFR 52.1020(c));
4. EPA-approved source-specific requirements (see 40 CFR 52.1020(d)); and
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, monitoring networks, etc. (see 40 CFR 52.1020(e)).

H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP are federally enforceable as of the effective date of EPA's approval of the respective revisions. In general, SIP revisions become effective 30 to 60 days after publication of EPA's SIP approval action in the **Federal Register**. In specific cases, a SIP revision action may become effective less than 30 days or greater than 60 days after the **Federal Register** publication date. In order to determine the effective date of EPA's approval for a specific Maine SIP provision that is listed in paragraph 40 CFR 52.1020 (c), (d), or (e), consult the volume and page of the **Federal Register** cited in the ''EPA approval date'' column of 40 CFR 52.1020 for that particular provision.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and to provide a smooth transition to the new SIP processing system, we are retaining the original Identification of plan section (see 40 CFR 52.1037). This section previously appeared at 40 CFR 52.1020. After an initial two-year period, we will review our experience with the new table format and will decide whether or not to retain the original Identification of plan section (40 CFR 52.1037) for some further period.

II. What EPA Is Doing in This Action

Today's action constitutes a ''housekeeping'' exercise to reformat the codification of the EPA-approved Maine SIP.

III. Good Cause Exemption

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

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules is discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply reformats the codification of provisions which are already in effect as a matter of law, 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of March 1, 2007. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. These corrections to the Identification of plan for Maine is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maine SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need to reopen the 60-day period for filing such petitions for judicial review for this reorganization of the ''Identification of plan'' section of 40 CFR 52.1020 for Maine.

List of Subjects in 40 CFR Part 52

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

Dated: September 17, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart U—Maine

■ 2. Section 52.1020 is redesignated as § 52.1037 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1037 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Maine'' and all revisions submitted by Maine that were federally approved prior to September 1, 2008.

* * * * *

■ 3. A new § 52.1020 is added to read as follows:

§ 52.1020 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan for Maine under section 110 of the Clean Air Act, 42 U.S.C. 7410 and 40 CFR part 51 to meet national ambient air quality standards or other requirements under the Clean Air Act.

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

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

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023; Air and Radiation Docket and Information Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA approved regulations.*

EPA-APPROVED MAINE REGULATIONS

State citation	Title/Subject	State effective date	EPA Approval Date EPA approval date and citation [1]	Explanations
Chapter 1	Regulations for the Processing of Applications.	05/20/1985	03/23/1993, 58 FR 15422.	Portions of Chapter 1. EPA did not approve the following sections of Chapter One: Section 1(A) through 1(Q), and 1(U) through 1(EE); Section 2; Section 4 (C) and (D); last sentence of Section 5(B); last sentence of Section 6(B); Section 6(D); Section 7(B)(1), (B)(2), and (B)(4) through (B)(11); Section 8(A), and 8(E) through 8(L); Sections 9, 10 and 11; Section 13; and Sections 15 and 16.
Chapter 100	Definitions	12/01/2005	11/21/2007, 72 FR 65462.	
Chapter 101	Visible Emissions	10/10/1979	02/17/1982, 47 FR 6829.	
Chapter 102	Open Burning	03/17/2005	02/21/2008, 73 FR 9459.	
Chapter 103	Fuel Burning Equipment Particular Emission Standard.	01/24/1983	02/26/1985, 50 FR 7770.	
Chapter 104	Incinerator Particulate Emission Standard	01/31/1972	05/31/1972, 37 FR 10842.	
Chapter 105	General Process Source Particulate Emission Standard.	01/31/1972	05/31/1972, 37 FR 10842.	
Chapter 106	Low Sulfur Fuel Regulations	02/08/1978	01/08/1982, 47 FR 947.	
Chapter 107	Sulfur Dioxide Emission Standards for Sulfate Pulp Mills.	01/31/1972	05/31/1972, 37 FR 10842.	
Chapter 109	Emergency Episode Regulation	08/14/1991	01/12/1995, 60 FR 2885.	
Chapter 110	Ambient Air Quality Standards	07/24/1996	03/22/2004, 69 FR 13227.	
Chapter 111	Petroleum Liquid Storage Vapor Control	09/27/1989	02/03/1992, 57 FR 3946.	
Chapter 112	Gasoline Bulk Terminals	07/19/1995	10/15/1996, 61 FR 53636.	
Chapter 113	Growth Offset Regulation	06/22/1994	02/14/1996, 61 FR 5690.	
Chapter 114	Classification of Air Quality Control Regions.	04/27/1994	08/30/1995, 60 FR 45056.	Revision to Remove Presque Isle as nonattainment for PM_{10}.
Chapter 115	Emission License Regulation	06/22/1994	02/14/1996, 61 FR 5690.	
Chapter 116	Prohibited Dispersion Techniques	10/25/1989	03/23/1993, 58 FR 15422.	
Chapter 117	Source Surveillance	08/09/1988	03/21/1989, 54 FR 11524.	
Chapter 118	Gasoline Dispensing Facilities	07/19/1995	10/15/1996, 61 FR 53636.	
Chapter 119	Motor Vehicle Fuel Volatility Limit	06/01/2000	03/06/2002, 67 FR 10099.	Controls fuel volatility in the state. 7.8 psi RVP fuel required in 7 southern counties.
Chapter 120	Gasoline Tank Trucks	06/22/1994	06/29/1995, 60 FR 33730.	
Chapter 123	Paper Coater Regulation	09/27/1989	02/03/1992, 57 FR 3946.	The operating permits for S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn incorporated by reference at 40 CFR § 52.1020 (c)(11), (c)(11), and (c)(18), respectively, are withdrawn.
Chapter 126	Capture Efficiency Test Procedures	05/22/1991	03/22/1993, 58 FR 15281.	
Chapter 126 Appendix A.	Capture Efficiency Test Procedures	05/22/1991	03/22/1993, 58 FR 15281.	Appendix.

EPA-APPROVED MAINE REGULATIONS—Continued

State citation	Title/Subject	State effective date	EPA Approval Date EPA approval date and citation [1]	Explanations
Chapter 127 and Appendix A.	New Motor Vehicle Emission Standards	12/31/2000	04/28/2005, 70 FR 21959.	Including Appendix A. Low emission vehicle program, with no ZEV requirements. Program achieves 90% of full LEV benefits. Chapter 127 Basis Statement included in the nonregulatory material.
Chapter 129	Surface Coating Facilities	01/06/1993	06/17/1994, 59 FR 31154.	
Chapter 129 Appendix A.	Surface Coating Facilities	01/06/1993	06/17/1994, 59 FR 31154.	Appendix.
Chapter 130	Solvent Cleaners	06/17/2004	05/26/2005, 70 FR 30367.	
Chapter 131	Cutback and Emulsified Asphalt	01/06/1993	06/17/1994, 59 FR 31154.	
Chapter 132	Graphic Arts: Rotogravure and Flexography	01/06/1993	06/17/1994, 59 FR 31154.	
Chapter 132 Appendix A.	Graphic Arts: Rotogravure and Flexography	01/06/1993	06/17/1994, 59 FR 31154.	Appendix.
Chapter 133	Gasoline Bulk Plants	06/22/1994	06/29/1995, 60 FR 33730.	
Chapter 134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	02/08/1995	04/18/2000, 65 FR 20749.	Regulations fully approved for the following counties: York, Sagadahoc, Cumberland, Androscoggin, Kennebec, Knox, Lincoln, Hancock, Waldo, Aroostock, Franklin, Oxford, and Piscataquis. Regulation granted a limited approval for Washington, Somerset, and Penobscot Counties.
Chapter 137	Emission Statements	07/06/2004	11/21/2007, 72 FR 65462.	Revised to incorporate changes required by EPA's consolidated emissions reporting rule. The entire rule is approved with the exception of HAP and greenhouse gas reporting requirements which were not included in the State's SIP revision request.
Chapter 138	Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides.	08/03/1994	09/09/2002, 67 FR 57148.	Affects sources in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties.
Chapter 139	Transportation Conformity	09/19/2007	02/08/2008, 73 FR 7465.	
Chapter 141	Conformity of General Federal Actions	04/19/2007	02/20/2008, 73 FR 9203.	
Chapter 145	NO_X Control Program	06/21/2001	03/10/2005, 70 FR 11879.	
Chapter 148	Emissions from Smaller-Scale Electric Generating Resources.	07/15/2004	05/26/2005, 70 FR 30373.	
Chapter 151	Architectural and Industrial Maintenance (AIM) Coatings.	10/06/2005	03/17/2006, 71 FR 13767.	
Chapter 152	Control of Emissions of Volatile Organic Compounds from Consumer Products.	08/19/2004	10/24/2005, 70 FR 61382.	
Chapter 153	Mobile Equipment Repair and Refinishing	02/05/2004	05/26/2005, 70 FR 30367.	
Chapter 155	Portable Fuel Container Spillage Control	07/14/2004	02/07/2005, 70 FR 6352.	With the exception of the word "or" in Subsection 7C which Maine did not submit as part of the SIP revision.
Vehicle I/M	Vehicle Inspection and Maintenance	07/09/1998	01/10/2001, 66 FR 1871.	"Maine Motor Vehicle Inspection Manual," revised in 1998, pages 1–12 through 1–14, and page 2–14, D.1.g.

EPA-APPROVED MAINE REGULATIONS—Continued

State citation	Title/Subject	State effective date	EPA Approval Date EPA approval date and citation [1]	Explanations
Vehicle I/M	Vehicle Inspection and Maintenance	07/09/1998	01/10/2001, 66 FR 1871.	Maine Motor Vehicle Inspection and Maintenance authorizing legislation effective July 9, 1998 and entitled L.D. 2223, ''An Act to Reduce Air Pollution from Motor Vehicles and to Meet Requirements of the Federal Clean Air Act.''

[1] In order to determing the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED MAINE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date [2]	Explanations
Central Maine Power, W.F. Wyman Station, Cousins Island, Yarmouth, Maine.	Department Finding of Fact and Order Air Emission License.	01/01/1977	01/08/1982, 47 FR 947	
Lincoln Pulp and Paper Company, Kraft Pulp Mill, (Lincoln, Maine).	Air Emission License Renewal; and New License for No. 6 Boiler.	03/09/1983	05/01/1985, 50 FR 18483	
JJ Nissen Baking Company, Cumberland County, Portland Maine.	Air Emission License A–440–74–C–A.	02/27/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by Maine Department of Environmental Protection (ME DEP) on February 25, 1997.
Prime Tanning Company, York County, Berwick, Maine.	Air Emission License Amendment #5 A–376–72–E–A.	03/23/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on July 23, 1997.
Prime Tanning Company, York County, Berwick, Maine.	Air Emission License Amendment #6 A–376–72–F–M.	10/28/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on October 27, 1997.
Portsmouth Naval Shipyard, York County, Kittery, Maine.	Air Emission License Amendment #4 A–452–71–F–M.	07/25/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on July 25, 1997.
Dexter Shoe Company, Penobscot County, Dexter, Maine.	Air Emission License A–175–72–H–A/R.	12/05/1996	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 5, 1996.
Dexter Shoe Company, Penobscot County, Dexter, Maine.	Air Emission License Amendment #1 A–175–71–I–M.	10/22/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on October 20, 1997.
Pioneer Plastics Corporation, Androscoggin County, Auburn, Maine.	Air Emission License Amendment #3 A–448–71–P–A.	06/16/1997	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on June 16, 1997.
Georgia Pacific Corporation, Washington County, Woodland, Maine.	Air Emission License Minor Revision/ Amendment #10 A–215–71–T–M.	01/05/1996	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on January 4, 1996.
Champion International Corporation, Hancock County, Bucksport, Maine.	Air Emission License Amendment #5 A–22–71–K–A.	01/19/1996	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on January 18, 1996.
International Paper Company, Franklin County, Jay, Maine.	Air Emission License Amendment #8 A–203–71–R–A.	10/04/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on October 4, 1995.
International Paper Company, Franklin County, Jay, Maine.	Air Emission License Amendment #9 A–203–71–S–M.	12/13/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 13, 1995.
James River Corporation, Penobscot County, Old Town, Maine.	Air Emission License Minor Revision/ Amendment #6 A–180–71–R–M.	12/11/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 8, 1995.
Lincoln Pulp and Paper Company, Penobscot County, Lincoln, Maine.	Air Emission License Amendment #8 A–177–71–J–M.	12/19/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 18, 1995.

EPA-APPROVED MAINE SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date [2]	Explanations
S.D. Warren Paper Company, Cumberland County, Westbrook, Maine.	Air Emission License Minor Revision/ Amendment #14 A–29–71–Z–M.	12/19/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 18, 1995.
S.D. Warren Paper Company, Somerset County, Skowhegan, Maine.	Air Emission License Amendment #14 A–19–71–W–M.	10/04/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on October 4, 1995.
S.D. Warren Paper Company, Somerset County, Skowhegan, Maine.	Air Emission License Amendment #15 A–19–71–Y–M.	01/10/1996	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on January 9, 1996.
Boise Cascade Corporation, Oxford County, Rumford, Maine.	Air Emission License Amendment #11 A–214–71–X–A.	12/21/1995	04/18/2000, 65 FR 20749	VOC RACT Determination issued by ME DEP on December 20, 1995.
Bath Iron Works Corporation, Sagadahoc County, Bath, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #10 A–333–71–M–M.	04/11/2001	05/20/2002, 67 FR 35439	VOC RACT determination for Bath Iron Works.
United Technologies Pratt & Whitney, York County, North Berwick, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #6 A–453–71–N–M.	04/26/2001	05/20/2002, 67 FR 35439	VOC RACT determination for Pratt & Whitney.
United Technologies Pratt & Whitney, York County, North Berwick, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #7 A–453–71–O–M.	07/02/2001	05/20/2002, 67 FR 35439	VOC RACT determination for Pratt & Whitney.
Moosehead Manufacturing Company, Piscataquis County, Dover-Foxcroft, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–338–71–F–M.	05/10/2001	05/20/2002, 67 FR 35439	VOC RACT determination for Moosehead Manufacturing's Dover-Foxcroft plant.
Moosehead Manufacturing Company, Piscataquis County, Monson, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–339–71–F–M.	05/10/2001	05/20/2002, 67 FR 35439	VOC RACT determination for Moosehead Manufacturing's Monson plant.
Central Maine Power Company, W.F. Wyman Station, Cumberland County, Yarmouth, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #1 A–388–71–C–A.	05/18/1995	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–388–71–C–A, Amendment #1, condition (q) for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station.
Central Maine Power Company, W.F. Wyman Station, Cumberland County, Yarmouth, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #1 A–388–71–D–M.	02/16/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–388–71–D–M, amendment #1, conditions 19 and 23 for FPL Energy's (formerly Central Maine Power) W.F. Wyman Station.
Tree Free Fiber Company, LLC, Kennebec County, Augusta, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #1 A–195–71–G–M.	06/12/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–195–71–G–M, Amendment #1, for Tree Free Fiber Company, LLC, (formerly Statler Industries Inc.).
Tree Free Fiber Company, LLC, Kennebec County, Augusta, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #1 A–195–71–D–A/R.	06/16/1995	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–195–71–D–A/R, section (II)(D), paragraphs (II)(F)(1) and (3), and conditions 12(A), 12(C), (13), (14) and (15) for Tree Free Fiber Company, LLC, (formerly Statler Industries Inc.).
Pioneer Plastics Corporation, Androscoggin County, Auburn, Maine.	Departmental Finding of Fact and Order Air Emission License A–448–72–K–A/R.	08/23/1995	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–448–72–K–A/R, paragraphs (II)(D)(2), (II)(D)(3) and conditions (13)(f) and 14(k) for Pioneer Plastics Corporation.
Pioneer Plastics Corporation, Androscoggin County, Auburn, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–448–71–O–M.	03/10/1997	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–448–71–O–M, Amendment #2, condition (14)(k), for Pioneer Plastics Corporation.

EPA-APPROVED MAINE SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date [2]	Explanations
Scott Paper Company, Kennebec County, Winslow, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–188–72–E–A.	11/15/1995	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–188–72–E–A, Amendment #2, conditions 8, paragraph 1, and 9, paragraphs 1, 2 and 4, for Scott Paper Company.
The Chinet Company, Kennebec County, Waterville, Maine.	Departmental Finding of Fact and Order Air Emission License A–416–72–B–A.	01/18/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–416–72–B–A, conditions (l) 1, 2, 3a, 3b, 3c, 3e, and (m) for The Chinet Company.
FMC Corporation-Food Ingredients Division, Knox County, Rockland, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #5 A–366–72–H–A.	02/07/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–366–72–H–A, Amendment #5, conditions 3, 4, 5, 7, 9, 11, 12, 15, 16, and 18 for FMC Corporation-Food Ingredients Division.
Dragon Products Company, Inc., Knox County, Thomaston, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #5 A–326–72–N–A.	06/05/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT.
Dragon Products Company, Inc., Knox County, Thomaston, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #7 A–326–71–P–M.	03/05/1997	09/09/2002, 67 FR 57148	Case-specific NO_X RACT.
S.D. Warren Paper Company, Cumberland County, Westbrook, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #13 A–29–71–Y–A.	06/12/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–29–71–Y–A, Amendment #13, conditions (k)2, (k)3, (q)8 and (p) for S.D. Warren Company.
Mid-Maine Waste Action Corporation, Androscoggin County, Auburn, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–378–72–E–A.	10/16/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT.
Portsmouth Naval Shipyard, York County, Kittery, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #2 A–452–71–D–A.	10/21/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–452–71–D–A, Amendment #2, conditions 3, 4, 5, 7, 9, 11, 16, 17, 18, 19, and 20 for Portsmouth Naval Shipyard.
Portsmouth Naval Shipyard, York County, Kittery, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #4 A–452–71–F–M.	07/25/1997	09/09/2002, 67 FR 57148	Case-specific NO_X RACT. Air emission license A–452–71–F–M, Amendment #4, condition 4 for Portsmouth Naval Shipyard.
Maine Energy Recovery Company, York County, Biddeford, Maine.	Departmental Finding of Fact and Order Air Emission License Amendment #4 A–46–71–L–A.	11/12/1996	09/09/2002, 67 FR 57148	Case-specific NO_X RACT.

[2] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) *Nonregulatory.*

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
Impact of Projected Growth for Next 10 Years on Air Quality for Maine Standard Metropolitan Statistical Areas.	Maine's Standard Metropolitan Statistical Areas.	06/26/1974	04/29/1975, 40 FR 18726.	
Incinerator Emission Standard—Regulation Implementation Plan Change, Findings of Fact and Order.	Maine	05/21/1975	04/10/1978, 43 FR 14964.	Revision to incinerator particulate emission standard which would exempt wood waste cone burners from the plan until 1980.

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
Incinerator Emission Standard—Regulation and Implementation Plan Change, Findings of Fact and Order.	Maine	09/24/1975	04/10/1978, 43 FR 14964.	Revision to incinerator particulate emission standard which would exempt municipal waste cone burners from the plan until 1980.
Air Quality Surveillance	Maine	03/10/1978	03/23/1979, 44 FR 17674.	Revision to Chapter 5 of the SIP.
New Sources and Modifications	Maine	03/10/1978	03/23/1979, 44 FR 17674.	Revision to Chapter 6 of the SIP.
Review of New Sources and Modifications.	Maine	12/19/1979	01/30/1980, 45 FR 6784.	Revision to Chapter 6 of the SIP.
Revisions to State Air Implementation Plan as Required by the Federal Clean Air Act.	Maine	03/28/1979	02/19/1980, 45 FR 10766.	Includes Control Strategies for Particulates, Carbon Monoxide, and ozone.
Plan for Public Involvement in Federally Funded Air Pollution Control Activities.	Maine	05/28/1980	09/09/1980, 45 FR 59314.	A plan to provide for public involvement in federally funded air pollution control activities.
Air Quality Surveillance	Maine	07/01/1980	01/22/1981, 46 FR 6941.	Revision to Chapter 5 of the SIP.
Attain and Maintain the NAAQS for Lead	Maine	11/05/1980	08/27/1981, 46 FR 43151.	Control Strategy for Lead. Revision to Chapter 2.5.
Establishment of Air Quality Control Sub-Region.	Metropolitan Portland Air Quality Control Region.	10/30/1975	01/08/1982, 47 FR 947.	Department Findings of Fact and Order—Sulfur Dioxide Control Strategy.
Sulfur Dioxide Control Strategy—Low Sulfur Fuel Regulation.	Portland-Peninsula Air Quality Control Region.	10/30/1975	01/08/1982, 47 FR 947.	Department Findings of Fact and Order—Implementation Plan Revision.
Letter from the Maine DEP documenting the December 1990 survey conducted to satisfy the 5 percent demonstration requirement in order to justify the 3500 gallon capacity cut-off in Chapter 112.	Maine	06/03/1991	02/03/1992, 57 FR 3046..	
Withdrawal of Air Emission Licenses for: Pioneer Plastics; Eastern Fine Paper; and S.D. Warren, Westbrook.	Maine	10/03/1990	02/03/1992, 57 FR 3046.	Department of Environmental Protection Letter dated December 5, 1989, withdrawing three source-specific licenses as of October 3, 1990.
Portions of Chapter 1 entitled ''Regulations for the Processing of Applications''.	Maine	02/08/1984	03/23/1993, 58 FR 15422..	
Review of New Sources and Modifications.	Maine	11/06/1989	03/23/1993, 58 FR 15422.	Revision to Chapter 6 of the SIP.
Letter from the Maine DEP regarding implementation of BACT.	Maine	05/01/1989	03/23/1993, 58 FR 15422..	
Review of New Sources and Modifications.	Maine	11/02/1990	03/18/1994, 59 FR 12853.	Revision to Chapter 6 of the SIP.
Joint Memorandum of Understanding (MOU) Among: City of Presque Isle; ME DOT and ME DEP.	City of Presque Isle, Maine.	03/11/1991	01/12/1995, 60 FR 2885.	Part B of the MOU which the Maine Department of Environmental Protection (ME DEP) entered into with the City of Presque Isle, and the Maine Department of Transportation (ME DOT).
Maine State Implementation Plan to Attain the NAAQS for Particulate Matter (PM10) Presque Isle Maine.	City of Presque Isle, Maine.	08/14/1991	01/12/1995, 60 FR 2885.	An attainment plan and demonstration which outlines Maine's control strategy for attainment of the PM10 NAAQS and implement RACM and RACT requirements for Presque Isle.
Memorandum of Understanding among: City of Presque Isle; ME DOT and ME DEP.	City of Presque Isle, Maine.	05/25/1994	08/30/1995, 60 FR 45056.	Revisions to Part B of the MOU which the ME DEP entered into (and effective) on May 25, 1994, with the City of Presque Isle, and the ME DOT.
Maintenance Demonstration and Contingency Plan for Presque Isle.	City of Presque Isle, Maine.	04/27/1994	08/30/1995, 60 FR 45056.	A maintenance demonstration and contingency plan which outline Main's control strategy maintenance of the PM10 NAAQS and contingency measures and provision for Presque Isle.
Letter from the Maine DEP dated July 7, 1994, submitting Small Business Technical Assistance Program.	Maine	07/07/1994	09/12/1995, 60 FR 47285.	Letter from the Maine Department of Environmental Protection submitting a revision to the Maine SIP.
Revisions to the SIP for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	Maine Statewide	05/12/1994	09/12/1995, 60 FR 47285.	Revisions to the SIP for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program Dated July 12, 1994 and effective on May 11, 1994.

Name of non regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
Corrected page number 124 of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program SIP.	Maine	08/16/1994	09/12/1995, 60 FR 47285.	Letter from ME DEP dated August 16, 1994 submitting a corrected page to the July 12, 1994 SIP revision.
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry Distillation and Reactors Control Technique Guideline Categories.	Maine Statewide	11/15/1994	04/18/2000, 65 FR 20749.	Letter from ME DEP dated November 15, 1994 stating a negative declaration for the Synthetic Organic Chemical Manufacturing Industry Distillation and Reactors Control Technique Guideline Categories.
Letter from the Maine Department of Environmental Protection regarding Control of Motor Vehicle Pollution (Inspection and Maintenance Program).	Greater Portland Metropolitan Statistical Area.	11/19/1998	01/10/2001, 66 FR 1875.	Letter from the Maine Department of Environmental Protection dated November 19, 1998 submitting a revision to the Maine SIP.
State of Maine Implementation Plan for Inspection/Maintenance dated November 11, 1998.	Greater Portland Metropolitan Statistical Area.	11/11/1998	01/10/2001, 66 FR 1875.	Maine Motor Vehicle Inspection and Maintenance Program.
Letter from the Maine DEP submitting additional technical support and an enforcement plan for Chapter 119 as an amendment to the SIP.	Southern Maine	05/29/2001	03/06/2002, 67 FR 10099.	Letter from the Maine Department of Environmental Protection dated May 29, 2001 submitting additional technical support and an enforcement plan for Chapter 119 as an amendment to the State Implementation Plan.
Application for a Waiver of Federally-Preempted Gasoline Standards.	Southern Maine	05/25/2001	03/06/2002, 67 FR 10099.	Additional technical support.
Letter from the Maine DEP dated July 1, 1997, submitting case-specific NO_X RACT determinations.	Maine	07/01/1997	09/09/2002, 67 FR 57148.	Letter from the Maine Department of Environmental Protection submitting a revision to the Maine SIP.
Letter from the Maine DEP dated October 9, 1997, submitting case-specific NO_X RACT determinations.	Maine	10/09/1997	09/09/2002, 67 FR 57148.	Letter from the Maine Department of Environmental Protection submitting a revision to the Maine SIP.
Letter from the Maine DEP dated August 14, 1998, submitting case-specific NO_X RACT determinations.	Maine	08/14/1998	09/09/2002, 67 FR 57148.	Letter from the Maine Department of Environmental Protection submitting a revision to the Maine SIP.
Chapter 127 Basis Statement	Maine	12/31/2000	04/28/2005, 70 FR 21959..	
Correspondence from Maine DEP indicating which portions of Chapter 137 should not be incorporated into the State's SIP.	Maine	06/06/2006	11/21/2007, 72 FR 65462.	Correspondence from David W. Wright of the Maine DEP indicating which portions of Chapter 137 Emission Statements should not be incorporated into the State's SIP.
State of Maine MAPA 1 form for Chapter 139 Transportation Conformity.	Maine nonattainment areas, and attainment areas with a maintenance plan.	09/10/2007	02/08/2008, 73 FR 7465.	Certification that the Attorney General approved the Rule as to form and legality.
Amendment to Chapter 141 Conformity of General Federal Actions.	Maine nonattainment areas, and attainment areas with a maintenance plan.	04/19/2007	02/20/2008, 73 FR 9203.	Maine Department of Environmental Protection amended its incorporation-by-reference within Chapter 141.2 to reflect EPA's revision to the Federal General Conformity Rule for fine particulate matter promulgated on July 17, 2006 (71 FR 40420–40427); specifically 40 CFR 51.852 Definitions and 40 CFR 51.853 Applicability.
State of Maine MAPA 1 form for Chapter 102 Open Burning Regulation.	Maine	01/03/2003	02/21/2008, 73 FR 9459.	Certification that the Attorney General approved the Rule as to form and legality.

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. E8–22958 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2007–0952; FRL–8722–8]

Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Indiana's State plan to control air pollutants from large Municipal Waste Combustors (MWCs). The Indiana Department of Environmental Management (IDEM) submitted the State plan on August 24, 2007. The revisions are consistent with Emission Guideline (EG) amendments promulgated by EPA on May 10, 2006. This approval means that EPA finds that the State plan amendments meet applicable Clean Air Act (CAA) requirements for large MWCs for which construction commenced on or before September 20, 1994. Once effective, this approval also makes the amended State plan Federally-enforceable. On July 8, 2008, EPA also published a proposed rule (73 FR 38954) and a direct final rule (73 FR 38925) on this revision. The direct final rule stated that if EPA received an adverse comment, it would withdraw the direct final rule and address all public comments received in a subsequent final rule based on the proposed rule. EPA received an adverse comment and removed the direct final rule on August 21, 2008 (73 FR 49349). This rule responds to the comments received and announces EPA's final action.

DATES: This final rule is effective on October 31, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0952. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly-available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

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*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?
II. What Action is EPA Taking?
III. Statutory and Executive Order Reviews

I. What Public Comments Were Received on the Proposed Approval and What is EPA's Response?

EPA received two comments on its July 8, 2008, proposal from the Indiana Department of Environmental Management (IDEM), as follows:

Comment 1. IDEM stated that in the table for particulate matter published in the **Federal Register** on July 8, 2008 (73 FR 38927), there is a typographical error in identifying the appropriate footnotes for the emission limitation. The first entry in the second column of the table reads "25 milligrams per dry standard cubic meter (mg/dscm) [1,4] "when the appropriate footnote designation should be "25 milligrams per dry standard cubic meter (mg/dscm). [1] "The final rule for amending 326 IAC 11–7–3 (LSA #06–434(F)) included in the State plan submitted on August 24, 2007 shows a strikeout over the number 4.

Comment 2. IDEM submitted an agency correction to their August 24, 2007, submittal to amend 326 IAC 11–7–3 to correct footnotes for mercury and sulfur dioxide in the emissions limitations table. The agency correction was published on July 23, 2008 in the *Indiana Register* and is effective September 6, 2008. IDEM is requesting that these corrections be a part of the final Federal approval.

EPA response 1 and 2. EPA is correcting the table to address both comments from IDEM as follows:

Pollutant	Emission limits
Particulate matter	25 milligrams per dry standard cubic meter (mg/dscm) [1]
Opacity	10% based on a 6-minute average
Cadmium	0.035 mg/dscm [1]
Lead	0.400 mg/dscm [1]
Mercury	0.050 mg/dscm; or 15% of the potential mercury emissions concentration [1,3]
Sulfur dioxide	29 parts per million by volume (ppmv); or 20% of the potential sulfur dioxide emission concentration [3,4]
Hydrogen chloride	29 ppmv; or 5% of the potential hydrogen chloride emissions concentration [2,3]
Organic emission (expressed as total mass dioxins/furans).	30 nanograms per dry standard cubic meter (ng/dscm) total mass [1]
Nitrogen oxides	205 ppmv [2]
Carbon monoxide [5]	100 ppmv 5 (based on a 4-hour block averaging time)

[1] Corrected to seven percent (7%) oxygen.
[2] Corrected to seven percent (7%) oxygen, dry basis.
[3] Whichever concentration is less stringent.
[4] Corrected to seven percent (7%) oxygen, dry basis, calculated as a 24 hour daily geometric mean.
[5] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to seven percent (7%) oxygen, dry basis, calculated as an arithmetic mean.

II. What Action Is EPA Taking?

We are approving Indiana's revised State plan for large MWCs, submitted to EPA on August 24, 2007, with corrections submitted on July 29, 2008. This plan revision approval excludes certain authorities retained by EPA, as stated in 40 CFR 60.30b(b) and 60.50b(n).

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

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

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

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA).

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b) (2).

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: September 19, 2008.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart P—Indiana

■ 2. Sections 62.3650, 62.3651, and 62.3652 to Subpart P are revised to read as follows:

§ 62.3650 Identification of plan.

(a) On September 30, 1999, Indiana submitted the State plan for implementing the Federal Large Municipal Waste Combustor (MWC) Emission Guidelines to control emissions from existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste. The enforceable mechanism for this plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11–7. The rule was adopted on September 2, 1998, filed with the Secretary of State on January 18, 1999, and became effective on February 17, 1999. The rule was published in the *Indiana Register* on March 1, 1999 (22 IR 1967).

(b) On August 24, 2007 (with corrections submitted on July 29, 2008), Indiana submitted a revised State plan as required by Sections 129(a)(5) and 129(b)(2) of the Act. The revised (Phase II) State plan implements amendments to 40 CFR Part 60, Subpart Cb published in the **Federal Register** on May 10, 2006. The Phase II State plan includes

an amendment to State Rule 326 IAC 11–7 that was adopted by Indiana on February 7, 2007.

§ 62.3651 Identification of sources.

The plan applies to all existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste, and for which construction, reconstruction, or modification was commenced on or before September 20, 1994, as consistent with 40 CFR Part 60, subpart Cb.

§ 62.3652 Effective Date.

The effective date of Phase I of the approval of the Indiana State plan for MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste was January 18, 2000.

Phase II of the State plan revision is effective December 1, 2008.

[FR Doc. E8–22952 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2007–0554; FRL—8721–8]

Clean Air Act Reclassification of the Houston/Galveston/Brazoria Ozone Nonattainment Area; Texas; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a request by the Governor of the State of Texas to voluntarily reclassify the Houston/Galveston/Brazoria (HGB) ozone nonattainment area from a moderate 8-hour ozone nonattainment area to a severe 8-hour ozone nonattainment area. EPA is also setting April 15, 2010, as the date for the State to submit a revised State Implementation Plan (SIP) addressing the severe ozone nonattainment area requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 31, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2007–0554. All documents in the docket are listed at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.*, 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', and ''our'' are used, we mean the EPA.

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I. What Is the Background for This Action?
II. What Action Is EPA Taking?
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V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. On April 30, 2004, we classified the area as a moderate nonattainment area for the 1997 8-hour ozone standard, with an attainment date no later than June 15, 2010 (69 FR 23858). On June 15, 2007, we received a request from the Governor of Texas seeking voluntary reclassification of the HGB area from a moderate nonattainment area to a severe nonattainment area under the 1997 standard. On December 31, 2007, we proposed to reclassify the HGB area to a severe nonattainment area for the 1997 8-hour ozone standard (72 FR 74252). In our proposal we discussed the consequences of reclassification. We also proposed and solicited comment on a range of dates, from December 15, 2008 to April 15, 2010, for the State to submit a revised SIP addressing the severe ozone nonattainment requirements. In this final rulemaking, for the reasons set forth below in Section II and in the responses to comments, we are (1) reclassifying the HGB area as a severe nonattainment area for the 1997 8-hour ozone standard and (2) selecting April 15, 2010 as the deadline by which the State must submit a revised SIP addressing the applicable severe area requirements.[1]

II. What Action Is EPA Taking?

A. Reclassification of the HGB Area

After fully considering all comments received on the proposed rule and pursuant to CAA section 181(b)(3), the HGB area is reclassified as a severe nonattainment area for the 1997 8-hour ozone standard. The new severe area attainment date for the HGB area is as expeditiously as practicable, but no later than June 15, 2019. The plain language of CAA section 181(b)(3) mandates that we approve the request to reclassify the area to severe, as requested by the Governor of Texas, and that we have no discretion to deny the request. Section 181(b)(3) provides in relevant part that ''[t]he Adminstrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification.''

A revised SIP for the HGB area must include all the requirements for serious ozone nonattainment area plans, such as: (1) Enhanced ambient monitoring (CAA section 182(c)(1)); (2) an enhanced vehicle inspection and maintenance program (CAA section 182(c)(3)); (3) a clean fuel vehicle program or an approved substitute (CAA section 182(c)(4)), and (4) gasoline vapor recovery for motor vehicle refueling emissions (CAA section 182(b)(3)[2]). The revised SIP must also meet the severe area requirements, including: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology (RACT) and reasonably available control

[1] In our December 31, 2007 proposal we stated that a revised 8-hour SIP submittal must contain fees on major sources if the area fails to attain the standard (CAA 182(d)(3) and 185). Currently EPA is developing regulations and guidance to address section 185 fees. The regulations and guidance will supersede any conflicting requirements in this final action.

[2] Under CAA section 202(a)(6) gasoline vapor recovery remains a requirement for serious and above nonattainment areas but is no longer a requirement for moderate nonattainment areas. Please see 59 FR 16262, April 6, 1994.

measures (RACM) (40 CFR 51.912); (3) reasonable further progress (RFP) reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (40 CFR 51.910); (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA sections 172(c)(9) and 182(c)(9)); (5) transportation control measures to offset emissions from growth in vehicle miles traveled (CAA section 182(d)(1)(A)); (6) reformulated gasoline (CAA section 211(k)(10)(D)); and (7) NSR permits (40 CFR part 165). See also the requirements for serious and severe ozone nonattainment areas set forth in CAA sections 182(c), 182(d) and 185. Because the HGB area was classified as severe under the 1-hour ozone standard, many of these requirements are currently being implemented.

B. Deadline for Submission of Revised SIP

In our proposal to this final rule, we identified a range of dates and requested supporting information to consider in setting the appropriate severe classification submittal date. We received a number of comments discussing the full range of dates offered. We considered each comment carefully before setting a submission date. Since CAA section 181(b)(3) does not establish a precise timeframe for submitting an attainment plan under a voluntary reclassification request, we reviewed the information provided by commenters and other information in the record before us and the particular set of circumstances related to HGB to establish a deadline that is consistent with and that will ensure that the 8-hour ozone standard will be attained as expeditiously as practicable but no later than June 15, 2019. After fully considering all comments received on the proposed rule and pursuant to CAA section 181(b)(3) we find that April 15, 2010, is the appropriate SIP submittal date for a revised SIP.

In selecting the April 15, 2010 date, we considered that this would allow the amount of time necessary to incorporate more recently available information into the photochemical modeling and provide time for control strategy development. The new information includes improved meteorological information available from the Texas Air Quality Study II (TexAQS II study) which took place in the 2005 and 2006 time period, improved emissions data from the HRVOC source monitoring rules that took effect in 2006, greater ambient data available from the TexAQS II study and incorporation of more advanced modeling techniques. An earlier date for submissions would have required the use of existing modeling episodes without the benefit of this more recent data. EPA believes, with this more robust data set, a more reliable control strategy can be developed. We discuss the points in more detail below.

Historically, the Houston area meteorology has been very difficult to model due to a combination of issues. The Houston area meteorology is very complex and is impacted by both a land/sea breeze interaction and a bay breeze function that make meteorological modeling of the area difficult. Modeling of other meteorological phenomena such as frontal passages/weak fronts, nocturnal jets, convergence zones, etc.; are also difficult to model and made even more difficult by the land/sea/bay breeze influences. TexAQS II data includes meteorological observations from numerous surface sites, two towers, hundreds of balloons, five aircraft, a research vessel and an offshore platform. These data will help to characterize important meteorological phenomena affecting ozone in the HGB area, including land/sea/bay breeze, nocturnal jets, stagnation, frontal passages, dispersion and mixing of ozone precursors, and transport.

Photochemical modeling of the Houston Area is also complicated by the significant difference between reported emissions from industrial sources and emissions estimated from actual monitored emissions from ambient concentrations. Previous 1-hour modeling included in a 2004 HGB 1-hour ozone SIP showed the benefit of modeling episodes that had more data collected than normal, such as in a field study. In the past, adjustments to reported emissions have been necessary to resolve the discrepancy between the emissions inventory and emissions estimated from ambient measurements. The field study data from 2005 and 2006 will help identify and quantify any continuing discrepancies between reported and actual emissions. During 2006, intensive monitoring was conducted that included monitoring from aircraft, intensive monitoring from a ship based platform, additional ground monitoring, collection of hourly specific emission inventory information for over 100 industrial facilities, and numerous additional meteorological monitoring sites. TCEQ has chosen to include episodes from 2006 that will benefit from the additional data and will result in higher confidence in any emission inventory adjustments that are done and the resulting photochemical modeling.

In addition, a large amount of federal, state, and scientific community resources have been enlisted to refine and analyze the data collected for use in the new 2005 and 2006 modeling. Analyses from the TexAQS II study only recently have become available in 2007 and 2008, and are critical to guiding the TCEQ modeling development and validating the results. Texas should be allowed time to incorporate these results, since otherwise the modeling would then likely need to be redone to incorporate these findings. We expect the TexAQS II data will contribute to better understanding of the adequacy of emissions inventories in several key areas, including shipping, onroad mobile sources, industrial VOCs and formaldehyde. It should also aid in the representation of chemical pathways in the models, since key parameters controlling the formation and destruction of ozone in the HGB area were investigated. Texas is also engaged in a number of activities to improve the model's ability to replicate the complex interactions leading to high ozone, including model enhancements to incorporate temperature variations, better land use and land cover data, improved information on biogenic emissions, better data for emissions and monitored concentrations, and advanced modeling techniques. See TCEQ Comments, page 3. TCEQ is modeling more than 50 episode days while making improvements in the modeling process and incorporating TexAQS II results.

TCEQ estimates it will take until March 2009 to complete the modeling work and associated quality assurance and peer review to support a proposed modeling and attainment demonstration. An April 15, 2010 submission date will allow a little more than a year for control strategies to be proposed and adopted. EPA believes that a year's period of time is as expeditious as practical for the development of the necessary control strategies given the complexity and difficulty of the HGB area ozone problem. The HGB area has one of the most severe ozone problems in the country. High ozone results from emissions both from the large industrial sector and the large urban population. The necessary controls to reach attainment are likely to be far reaching and technology forcing. Texas has already initiated a stakeholder process for strategy development so that they will be well positioned when the modeling work is completed.

An earlier date would mean the TCEQ would have to rely on a less reliable 2000 modeling episode that would yield

more uncertainty to the modeling analysis, and suspend work on the new modeling episodes. At best, a June 2009 date may have included initial work with the 2005 and 2006 episodes in addition to the 2000 episode, but would not have incorporated much of the data that was collected during TexAQS II, and thus, would have more uncertainties and would be less representative. A deadline for submission of the attainment demonstration that is earlier than April 2010 would inhibit the development of effective attainment strategies based upon new modeling of ozone episodes that occurred in 2005 and 2006, the more recent 2006 emissions inventory, and incorporation of findings from TCEQ's most recent field study of ozone formation, TexAQS II. Relying on the 2000 episode likely would result in the need to subsequently revise the SIP, and would delay the development of effective and defensible control strategies. Overall, it is EPA's judgment that the longer submittal date will give TCEQ the necessary time to develop the modeling and control strategies using the 2005 and 2006 episodes with the TexAQS II field study data resulting in a more representative and accurate attainment demonstration.

In addition to modeling, TCEQ must also analyze emissions data to develop ozone control strategies. To do so, TCEQ must incorporate the findings from TexAQS II into its SIP planning, and must also rely on the 2006 NO_X and VOC emissions inventory, which was not expected to be complete until early 2008 and would therefore not allow for some early aspects of control strategy development until 2008. It is important to use the 2006 inventory since it will provide the most accurate VOC emissions data, in part as a result of monitoring and testing requirements established in the HRVOC rules for flares, vents and cooling towers. The 2006 point source inventory represents years of efforts to improve emissions data, including more accurate speciation and reporting of VOC emissions.

In summary, the April 15, 2010 is appropriate as the submission date due to: (1) The complexity in developing and implementing effective emission reductions for the area; and (2) the opportunity for a more robust attainment demonstration plan that relies on better data and modeling. Developing and implementing effective emission reductions for the area is complex due to its: (1) Complex coastal meteorology; (2) large urban population; (3) large industrial area; and (4) the current underestimation issues of industrial emissions. With this submission, more recent data and modeling episodes may be used to identify control strategies and demonstrate attainment of the standard. In our December 31, 2007, proposal, we stated that the new attainment demonstration should be based on the best information available (72 FR 74252, 74254). A SIP revision submission date of April 15, 2010, allows for the best information to be used to produce an attainment demonstration that is representative, robust and accurate. This date is most likely to ensure that the 8-hour ozone standard will be attained as expeditiously as practicable but no later than June 15, 2019.

III. What Comments Did EPA Receive on the December 31, 2007, Proposal and How Has EPA Responded to Them?

We received 35 comments on our December 31, 2007 proposal from citizens, public interest groups, business groups, elected officials and governmental organizations. The comments we received on our proposal can be found on the internet in the electronic docket for this action. To access the comments, please go to *http://www.regulations.gov* and search for Docket No. EPA–R06–OAR–2007–0554, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. The discussion below addresses the comments we received on our proposed action. The discussion addresses comments received on (1) reclassification of the area to severe, (2) the date for a revised SIP submittal, and (3) relief of CAA attainment demonstration and related requirements.

A. Reclassification of the Area to Severe

Comment: Comments were received that EPA should not reclassify the area to severe. Comments were submitted that (1) EPA is limited by language in CAA section 181(b)(3) that EPA ''* * * shall grant the request of any State to reclassify a nonattainment area in that State *in accordance with table 1 of subsection (a)* to a higher classification'' (emphasis added); (2) table 1 had been superseded by the 8-hour ozone standard table at 40 CFR 51.903; and (3) the appropriate 8-hour ozone design value range for table 1 is 0.107–0.199 parts per million (ppm), which would make the area's classification ''serious''. Comments were also submitted that reclassification to severe, which is two levels higher than moderate, conflicts with other CAA provisions for ozone nonattainment areas (CAA Title I, Part D, Subpart 2), and EPA's action on the State's reclassification request must be reasonable.

Response: We reiterate our position that the plain language of section 181(b)(3) mandates that we approve the request to reclassify the area to severe, as requested by the Governor of Texas, and that we have no discretion to deny the request. Section 181(b)(3) provides in relevant part that ''[t]he Adminstrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification.'' Several commenters agreed with EPA's position on this matter as well as the position that the State could select the higher classification best suited to its needs. EPA agrees with these commenters.

One commenter cited to our Phase 1 final rule to implement the 8-hour ozone national ambient air quality standard (NAAQS) response to comments section for EPA's rationale for voluntary reclassifications (69 FR 23951, 23962). We agree with this commenter. In the response to comments on that rule, we stated that voluntary reclassification is the mechanism defined in the CAA for states to obtain additional time for attainment when necessary. In the Phase 1 rule responses to comments, we stated:

> A State can receive more time to attain by voluntarily submitting a request to EPA for a higher classification—including the classification they had under the 1-hour NAAQS. The CAA (Section 181 (b)(3)) directs EPA to grant a State's request, and to publish notice of the request and EPA's approval.

This is precisely the situation in HGB. It was designated severe under the 1-hour standard and under the 8-hour standard it was designated as moderate. Texas is now asking for the area to be reclassified to severe under the 8-hour standard. We further stated that we recognized that voluntary reclassification is a legitimate option under the CAA, and may be an attractive option if the State is unable to develop a plan that demonstrates that an area will attain within the time period for its assigned classification.

Table 1 of CAA section 181(a) (for the 1-hour ozone standard) and table 1 of 40 CFR 51.903 (for the 8-hour ozone standard) list classifications for nonattainment designations, the ozone design values used for initial designations, and the maximum period for attainment of the standard. Table 1 from 40 CFR 51.903 is reprinted below. Table 1 refers to classifications ranging from marginal to extreme. For the reasons set forth below, in acting on a request for voluntary reclassification, we are not constrained by the 8-hour design values for initial classifications

set forth in table 1. Therefore the request by Texas to reclassify the area from moderate to severe is in accordance with table 1.

TABLE 1—CLASSIFICATION FOR 8-HOUR OZONE NAAQS FOR AREAS SUBJECT TO § 51.902(a) (FROM 40 CFR 51.903)

Area class		8-hour design value (ppm ozone)	Maximum period for attainment dates in state plans (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal	From up to [1]	0.085 0.092	3
Moderate	From up to [1]	0.092 0.107	6
Serious	From up to [1]	0.107 0.120	9
Severe–15	From up to [1]	0.120 0.127	15
Severe–17	From up to [1]	0.127 0.187	17
Extreme	Equal to or above	0.187	20

[1] But not including.

Some commenters contended that a severe classification is not justified by the HGB area's air quality design value as interpreted by table 1, and thus the request is not in accordance with table 1 and EPA is not mandated to grant the request. This contention misreads section 181(b)(3).

The plain meaning of CAA section 181(b)(3) is clear, and, in addition, if one compares it with the other provisions of section 181(b) of the CAA it supports our position that Congress meant there to be no discretion on the part of EPA in approving a voluntary reclassification, and the State can request any higher reclassification it deems appropriate. The authority to seek a reclassification beyond the next highest classification is evident when one contrasts the statutory language governing voluntary reclassification in section 181(b)(3) with statutory language governing reclassification upon failure to attain in the previous paragraph of the CAA. In section 181(b)(2), Congress specified that:

> Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by [the attainment date] shall be reclassified by operation of law in accordance with the table 1 of subsection (a) of this section to the higher of—
>
> (i) The next higher classification for the area, or
>
> (ii) The classification applicable to the area's design value at the time of the [reclassification] notice * * *

The specific direction in section 181(b)(2) that, upon failure to attain, a nonattainment area shall be reclassified to the higher of ''the next higher classification'' or ''the classification applicable to the area's design value'' contrasts with the language of section 181(b)(3), which states that a voluntary reclassification may be to ''a higher classification.'' In section 181(b)(3), there is no reference to the area's design value or limitation that the reclassification must be equivalent to the area's design value. Under section 181(b)(3), reference to ''in accordance with table 1'' means in accordance with the area classification categories of marginal to extreme, not air quality design values used for initial classifications. Section 181(b)(3), unlike section 181(b)(2), does not direct comparison to the area's air quality design value. As in section 181(b)(2), Congress also referred explicitly to design values in section 181(a), providing that an ozone nonattainment area's initial classification should be ''based on the design value of the area.'' No such limitation is placed on a voluntary reclassification under section 181(b)(3). As one commenter pointed out, reclassification from ''moderate'' to ''severe'' is in accordance with table 1, since it defines the range of what is a ''higher classification'' and the associated attainment dates. If Congress had meant to restrict or specifically direct what classification a State could choose, it would have written similar limiting language into section 181(b)(3), and would have included, as it did in section 181(b)(2), a specific time for determining the design value of the area. (Without such a timeframe being defined, it is not possible to determine the area's design value). While both sections 181(b)(2) and 181(b)(3) provide that reclassification shall be ''in accordance with table 1 of subsection (a)'', section 181(b)(3) does not direct that the design value of the area being reclassified fall within the range of design values corresponding to a particular classification. Even under section 181(b)(2), reclassification is not required to be equivalent to the air quality of the area at the time of classification. Under section 181(b)(2), an area being reclassified is not required to match its design value to the design value for the classification category in table 1, but rather to the ''higher'' of the next classification or its design value at the time of reclassification. It would be illogical for Congress, as it did, to require areas to be reclassified to classifications higher than their design value under the mandatory provisions of section 181(b)(2), while prohibiting such reclassification under the voluntary provision of 181(b)(3). Nor is there any basis, as a commenter suggests, to construe the reference in section 181(b)(3) to reclassification to ''a higher classification'' to be limited to ''the next higher classification'' or a single classification level. Therefore EPA's approval of the voluntary reclassification from moderate to severe is reasonable and in keeping with the statutory provisions, which provide EPA no discretion to deny a request for voluntary reclassification to a higher classification.

A commenter's argument that, in order to be ''in accordance with table 1,'' the area's design value at the time of reclassification must match the design value for initial classification in

table 1, contradicts the commenters' own position that the area should be reclassified to serious, since, according to the commenter, the more recent design values do not match the severe area concentrations. The area's most recent design values are 103 parts per billion (ppb) in both 2005 and 2006, and 96 ppb in 2007—these levels match the design value for initial classification for moderate areas. Of course, as pointed out above, section 181(b)(3) makes no reference to design values nor any timeframe for determining them—thus there is confusion in the commenters' discussions about the appropriate dates for determining the area's design value, with one commenter arguing that ''the HGB area's design value is most consistent with 0.107–0.119 ppm,'' the serious range, EDF Comments at 8, while another notes that the ''2005 eight-hour design value was 103 ppb''. GHASP Comments, at 2. Thus the commenters' argument that a voluntary reclassification can only be to a classification that matches the area's design value, is further undermined by the indeterminacy of the relevant design value with regard to section 181(b)(3). To the extent that the most recent design values match the initial classification levels for moderate areas, this also conflicts with the commenters' assertions that the area should be reclassified to serious and not severe.

Other provisions in the CAA do not conflict with our action to reclassify the area to severe. Sections 181(a)(4) and (5) were cited in a comment. Neither section has anything to do with the voluntary reclassification provision in section 181(b)(3). CAA section 181(a)(4) gives the Administrator discretion, within 90 days of an original classification, to ''adjust'' that initial classification upwards or downward if an area's design value places it within 5 percent of the next classification. It has no bearing on the circumstances for granting a request for voluntary reclassification as set forth in section 181(b)(3). For more information, please see our September 22, 2004, action reclassifying certain 8-hour ozone nonattainment areas from moderate to marginal under section 181(a)(4) (69 FR 56697). CAA section 181(a)(5) simply sets forth the criteria for granting attainment date extensions if an area is *not being reclassified*, and it does not affect or shed light on the criteria for granting voluntary reclassifications. It provides for a maximum of two 1-year extensions of the attainment date for the 1-hour ozone NAAQS. The attainment date can be extended—without reclassifying the area—if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan and there was no more than 1 exceedance of the 1-hour ozone NAAQS preceding the extension year. CAA section 181(a)(4) contains very specific language regarding how to make immediate, minor adjustments to initial classifications, and section 181(a)(5) contains specific language on how to extend an attainment date when an area is not being reclassified. Congress addressed separately and equally specifically voluntary reclassifications in section 181(b)(3). Thus EPA interprets the voluntary reclassification differently from these other provisions. Based on the language in CAA section 181(b)(3), our action is consistent with the CAA, and it is reasonable. Section 181(a)(4) applies only in limited circumstances to initial designations, and is not applicable here. Section 181(a)(5) applies to circumstances for extending attainment dates without changing the classification of the area, and is not applicable here. Neither provision conflicts with or limits the scope of section 181(b)(3).

Comment: Several comments were received stating that HGB had never attained any standard and that further delay in attaining the standard by granting the reclassification is not warranted. Comments were received that the goal of the SIP is attainment of the 8-hour ozone standard, not simply a reduction in ozone precursors. Comments contended that TCEQ has repeatedly failed to reach this goal and to implement adequate control measures, and that sanctions should be imposed and that it should not be rewarded with extra time. One commenter cited an April 2007 letter from the Mayor of Houston and Harris County Judge Emmett, stating that they opposed the idea of a double ''bump-up'' and that the resulting delay in attainment was unacceptable.

Response: As stated above, voluntary reclassification is a legitimate option under the CAA, and it is an appropriate option if the State is unable to develop a plan that demonstrates that an area will attain within the time period for its assigned classification. Texas' 8-hour submittal demonstrated that the State could not model attainment by its moderate attainment date. Moreover, under the Act, EPA does not have discretion to deny a request for voluntary reclassification.

With respect to the April letter from the Mayor of Houston and Judge Emmett, subsequent comments from them on EPA's proposed reclassification were more supportive of EPA's proposed action than the April 2007 letter indicated. These comments stated that ''whether the EPA determines that a single or double bump up in classification for the HGB is appropriate, our concern remains the timely attainment of the NAAQS. The control measures included in the SIP must ensure that the NAAQS is attained as expeditiously as practicable as required by the Clean Air Act.'' The comments noted that ''[w]hile the City and County are concerned that the SIP submittal date of 2010 could delay achieving attainment, the TCEQ believes that this extended period will allow TCEQ to develop the most effective SIP possible. This up front investment of time should result in a SIP that will not have to be significantly changed or corrected to include revised data. Developing a quality SIP should avoid delays in implementation.'' EPA notes that, under the Clean Air Act, when an area is reclassified, it must still attain the standard as expeditiously as practicable. Thus the concerns expressed in the comment should be alleviated by an appropriate attainment demonstration.

As set forth in other responses to comments, EPA does not believe it appropriate to impose sanctions for attainment demonstration-related moderate area SIP requirements, where the area has been unable to demonstrate attainment by the moderate area deadline, is being reclassified to severe, and is in the process of developing a severe area attainment demonstration and related requirements. As set forth in the proposal, Texas has submitted other non-attainment demonstration-related moderate area requirements, and as a former 1-hour severe ozone nonattainment area, is already implementing other severe area requirements. Once reclassified the area is no longer required to submit an attainment demonstration for the prior classification, so sanctions for failure to submit such a SIP would be inappropriate. The area has demonstrated that it could not develop a reasonable attainment demonstration for a moderate area deadline so sanctions could never be cured in the area, if applied.

Comment: A comment was received that if we grant Texas' reclassification request of the area to severe that the approval should be conditioned upon adoption by Texas of further control measures within 12 months of approval of the reclassification.

Response: CAA section 181(b)(3) directs EPA to grant a State's request to reclassify a nonattainment area in that State to a higher classification. Section

181(b)(3) does not authorize EPA to attach conditions (such as additional control measures) upon our granting of such a request, but there are consequences to being reclassified. Reclassification to a severe designation will result in the HGB ozone nonattainment area being subjected to severe 8-hour ozone nonattainment area requirements, including New Source Review (NSR) and Title V permit requirements, in addition to applicable 1-hour requirements. For example, Texas will have to meet the more stringent reasonable further progress (RFP) reductions in VOC and NO_X emissions required by a severe classification (40 CFR 51.910).

In addition, TCEQ has already initiated stakeholder meetings addressing additional control measures. CAA section 172(c)(1) requires SIPs for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. When we receive the HGB attainment demonstration for the 1997 ozone standard, we will review it to determine whether it provides for all RACM necessary to attain the standard as expeditiously as practicable and provides for implementation of those measures as expeditiously as practicable. For more information on RACM, please see our ''Guidance on Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' (Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, November 30, 1999, available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/revracm.pdf*). With respect to the commenter's suggestion that additional controls be adopted and submitted within 12 months, please see Section II above, as well as EPA's responses to comments on the timing of submission for the revised SIPs that are due as a result of reclassification to severe.

Comment: A comment was received that reclassification of the area to severe subjects the action to review under Executive Order 12866 (Regulatory Planning and Review, 58 FR 51735, October 4, 1993) as a significant regulatory action. The commenter also noted that protecting children from environmental health risks is a priority concern, as expressed in Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks, 62 FR 19885, April 23, 1997).

Response: We continue to believe that reclassification of the area to severe is not a ''significant regulatory action'' under Executive Order 12866, and therefore is not subject to Executive Order 12866. Voluntary reclassifications to a higher classification under section 181(b)(3) of the CAA are based solely on requests by the State, and we are required under the CAA to grant them. As we explained in response to comments above, EPA's approval of the State's request for reclassification is mandatory and is in accordance with the requirements of section 181(b)(3) of the CAA. Contrary to commenter's contention, the reclassification of HGB from moderate to severe is consistent with the statutory provisions. With respect to the commenter's concern regarding E.O. 13045, EPA interprets that provision as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it grants a voluntary reclassification, and EPA's approval is mandatory. Moreover, regardless of its classification, the HGB area remains subject to the obligation to attain as expeditiously as practicable.

B. Date for a Revised SIP Submittal

Comment: Comments were received opposing April 15, 2010, the date requested by TCEQ, as the submission date for a SIP revision. One commenter stated that: (1) There is no precedent for such a long timeframe; (2) for the San Joaquin Valley area voluntary reclassification, EPA allowed only 7 months to submit a new attainment plan and 12 months to incorporate new extreme area SIP elements; (3) EPA should treat these two voluntary ''bump-up'' requests similarly and apply an equally short SIP submission date to the HGB area; and (4) EPA should not reward delay by Texas in implementing all RACM and completing an attainment demonstration with a protracted timeframe in which to develop a new SIP.

One commenter stated that: (1) A state is generally provided 12 months to modify and revise the applicable SIP if there was a failure to meet an attainment date; (2) when EPA finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQ standard, it has the authority to require the state to revise the plan and submit a new plan no later than 18 months after notice to the state of the need for revision; (3) the initial SIP submission deadline when drafting a plan for the first time ''from scratch'' is a maximum of three years; and (4) it seems unreasonable to need 34 months to revise a SIP that was revised in May 2007. Another commenter stated that it was unacceptable that TCEQ would be allowed to delay until April 2010 before it had to adopt further control measures. Other commenters stated that the sooner we reach the point when planning stops and action starts, the sooner we will all enjoy the benefits of cleaner, healthier air.

Response: In our proposal to this final rule, we identified a range of dates and requested supporting information to consider in setting the appropriate severe classification submittal date. Many of these factors were discussed by the commenters who advocated a shorter timeframe than requested by Texas. We considered each comment carefully before setting a submission date. Since CAA section 181(b)(3) does not establish a precise timeframe for submitting an attainment plan under a voluntary reclassification request, we must review the record before us and each particular set of circumstances to establish a deadline that is consistent with and that will ensure that the 8-hour ozone standard will be attained as expeditiously as practicable but no later than June 15, 2019. See section 182(i), which provides that when reclassifying areas under section 181(b)(2), EPA may adjust applicable deadlines for requirements other than attainment dates to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. EPA believes that, by analogy, it would be logical to assume that EPA has this same authority in granting reclassifications under section 181(b)(3). We requested in the proposal that commenters state their choice of a submittal date and justify their selection. After reviewing all the justifications before us, we have determined the April 15, 2010, date is appropriate and reasonable based on the totality of the information. As we set forth in Section II above, and in our responses to comments, we believe that TCEQ and the other commenters supporting an April 15, 2010, date presented compelling support for this submission deadline.

Historically, the Houston area has been very difficult to model due to a combination of issues. The Houston area meteorology is very complex and is impacted by both a land/sea breeze interaction and a bay breeze function that make meteorological modeling of the area difficult. Modeling of other meteorological phenomena such as frontal passages/weak fronts, nocturnal jets, convergence zones, etc. are also difficult to model and made even more difficult by the land/sea/bay breeze

influences. TexAQS II data includes meteorological observations from numerous surface sites, two towers, hundreds of balloons, five aircraft, a research vessel and an offshore platform. These data will help to characterize important meteorological phenomena affecting ozone in the HGB area, including land/sea/bay breeze, nocturnal jets, stagnation, frontal passages, dispersion and mixing of ozone precursors, and transport.

Photochemical modeling of the Houston Area is also complicated by the significant difference between reported emissions from industrial sources and emissions estimated from ambient concentrations. Previous 1-hour modeling included in a 2004 HGB 1-hour ozone SIP highlights the benefit of using modeling episodes that had more data collected than normal, such as in a field study. In the past, adjustments to reported emissions have been necessary to resolve the discrepancy between the emissions inventory and emissions estimated from ambient measurements. The field study data from 2005 and 2006 will help identify and quantify any continuing discrepancies between reported and actual emissions. During 2006 intensive monitoring was conducted that included monitoring from aircraft, intensive monitoring from a ship based platform, additional ground monitoring, collection of hourly specific emission inventory information for over 100 industrial facilities, and numerous additional meteorological monitoring sites. TCEQ has chosen to include episodes from 2006 that will benefit from the additional data and will result in higher confidence in any emission inventory adjustments that are done and also in the resulting photochemical modeling.

In addition, a large amount of federal, state, and scientific community resources have been enlisted to refine and analyze the data collected for use in the new 2005 and 2006 modeling. Analyses from the TexAQS II study only recently have become available in 2007 and 2008, and are critical to guiding the TCEQ modeling development and validating the results. Texas should be allowed time to incorporate these results, since otherwise the modeling would likely need to be redone to incorporate these findings. We expect the TexAQS II data will contribute to better understanding of the adequacy of emissions inventories in several key areas, including shipping, onroad mobile sources, industrial VOCs and formaldehyde. It should also aid in the representation of chemical pathways in the models, since it investigated key parameters controlling the formation and destruction of ozone in the HGB.

Overall, it is EPA's judgment that the longer submittal date will give TCEQ the necessary time to develop the modeling and control strategies using the 2005 and 2006 episodes with the TexAQS II field study data resulting in a more representative and accurate attainment demonstration. It will take time to incorporate the field study data collected in 2005 and 2006 into the meteorological and photochemical modeling for the area. This includes processing of radar data (available in mid-2008), compilation and review of 2006 emission inventory data (mid-2008), inclusion of additional meteorological data (2007–2008), inclusion of Continuous Emission Monitoring (CEM) data from the HRVOC sources that have CEMs (mid-2008), analysis and inclusion of data from ground, ship, and aircraft data collected (2007–2009).

With regard to the commenter's contention that the SIP was revised in May 2007, it is important to note that the 2007 SIP revision did not demonstrate attainment and that extensive additional work would be required to do so and to adopt new requirements as appropriate.

Even with an April 15, 2010, submission date, we expect the area to continue to reduce VOC and NO_X emissions through Federal, State and local controls. Provisions for reasonable further progress (RFP) reductions in these ozone precursor emissions is a requirement for a severe area SIP (40 CFR 51.910). For the HGB area where 15% VOC reductions have already been achieved, required severe area reductions are an average of 3 percent per year of VOC and/or NO_X for: (1) The 6-year period following the baseline emissions inventory year (2002); and (2) all remaining 3-year periods after the first 6-year period out to the area's attainment date (40 CFR 51.910(a)(1)(B)). These reductions will lead to lower ozone levels. As noted above, TCEQ has already conducted stakeholder meetings on additional control measures. TCEQ is also implementing the Texas Emission Reduction Program (TERP) and the AirCheckTexas program to reduce emissions. TERP provides funding for reducing NO_X emissions from diesel engines. AirCheckTexas provides funding for replacing older, higher polluting automobiles with newer less polluting ones.

With respect to the comments supporting submission dates earlier than April 2010, see the responses to comments below. With respect to the comment concerning the 7-month submission deadline for the San Joaquin Valley voluntary reclassification, EPA notes that contrary to commenter's contention, EPA's actions in setting the submittal date and the timeframes in the voluntary reclassification of San Joaquin are consistent with the deadline set here. Although in its April, 2004 notice EPA set a submittal date of November 15, 2004 (and some months later for Title V and NSR requirements), EPA noted that additional time was not warranted ''because the District has been working on the extreme area plan since 2002, and has indicated that they can meet the November 15, 2004 deadline.'' 69 FR 20550, 20551. (April 16, 2004). Thus the time period for work on the plan in San Joaquin is comparable to that being afforded the State here, and, as in San Joaquin, is consistent with what the State has requested. Moreover, as set forth in detail elsewhere in this notice, under the circumstances presented here, the complex challenges confronting the HGB area justify the length of time provided for submittal of the plan.

Comment: Comments were received supporting dates earlier than April 15, 2010, as the submission date for a SIP revision. One comment stated that the submission date for a revised SIP should be as expeditiously as practicable but no later than December 15, 2008, which would be 18 months from the reclassification request. Other comments supported a June 2009 date by which the SIP revision should be submitted. Commenters stated that a June 15, 2009, date allows Texas much more time than normal, but less than requested. One commenter stated that a June 2009 date would ensure that sufficient work can be completed on the plan while respecting the need for urgent action.

Response: As stated above, we believe that TCEQ and the other commenters who supported the April 15, 2010, date have presented compelling arguments and information, and that this date is as soon as practicable. If December, 2008 were set as the deadline, TCEQ would have to rely on a 2000 modeling episode instead of newer, more comprehensive and representative modeling episodes. Due to the limitations of the 2000 episode (since the 2000 episode large reductions in NO_X and HRVOCs with the Cap and Trade program have occurred which add uncertainity to future year modeling projections and the 2000 episode had some periods of unrepresentative meteorological conditions), reliance on it would likely result in less accurate and representative projections of future

design values (especially when weighed against using the more recent field study data collected in 2005 and 2006 and the modeling of more recent episodes). See the Comments of the TCEQ, pages 1–2. Thus, TCEQ is modeling a number of episodes from 2005 and 2006, in order to develop an adequate basis for developing an attainment strategy. This allows for the episodes to include the effects of earlier reductions of NO_X and HRVOCs in the base inventories and also base the episodes on periods with more intensive data collection to further lessen the uncertainties in modeling projections. The episodes from 2005 and 2006 are more representative of the typical conditions that lead to high ozone levels. Due to complicated source-receptor relationships and meteorology in the HGB, this modeling requires an intensive effort, involving six–twelve months more time than when modeling more typical urban areas. These complex relationships are in large part due to the complicated meteorological characteristics of the HGB area, including land/bay/sea breeze and their interaction with other meteorological features that impact the dispersion and mixing of ozone precursors; and also the complex mixture of industrial emissions of VOCs (including HRVOCs) and NO_X that make modeling the HGB area much different than most other areas of the country. The additional field study data and detailed emission inventory data collected during the 2005 and 2006 period will improve the accuracy of the base case modeling (meteorology, emissions, and chemistry) and help to yield more representative SIP modeling demonstration.

A large amount of federal, state, and scientific community resources have been enlisted to refine and analyze the data collected for use in the new 2005 and 2006 modeling. Analyses from the TexAQS II study only recently have become available in 2007 and 2008, and are critical to guiding the TCEQ modeling development and validating the results. Texas should be allowed time to incorporate these results, otherwise the modeling would then likely need to be redone to incorporate these findings. We expect the TexAQS II data will contribute to better understanding of the adequacy of emissions inventories in several key areas, including shipping, onroad mobile sources, industrial VOCs and formaldehyde. It should also aid in the representation of chemical pathways in the models, since key parameters controlling the formation and destruction of ozone in the HGB area were investigated. TexAQS II data includes meteorological observations from numerous surface sites, two towers, hundreds of balloons, five aircraft, a research vessel and an offshore platform. These data will help to characterize important meteorological phenomena affecting ozone in the HGB area, including land/sea/bay breeze, nocturnal jets, stagnation, frontal passages, dispersion and mixing of ozone precursors, and transport. In addition, Texas is engaged in a number of activities to improve the model's ability to replicate the complex interactions leading to high ozone, including model enhancements to incorporate temperature variations, better land use and land cover data, improved information on biogenic emissions, better data for emissions and monitored concentrations, and advanced modeling techniques. See TCEQ Comments, page 3. TCEQ is modeling more than 50 episode days while making improvements in the modeling process and incorporating TexAQS II results. TCEQ estimates it will take until March 2009 to complete the modeling work and associated quality assurance and peer review to support a proposed modeling and attainment demonstration.

A December 2008 date would mean the TCEQ would have to rely on the less reliable 2000 modeling episode, and suspend work on the new modeling episodes. At best a June 2009 date may have included initial work with the 2005 and 2006 episodes in addition to the 2000 episode, but would not have incorporated much of the data that was collected during TexAQS II, and thus would have more uncertainties and would be less representative. A deadline for submission of the attainment demonstration that is earlier than April 2010 would inhibit the development of effective attainment strategies based upon new modeling of ozone episodes that occurred in 2005 and 2006, the more recent 2006 emissions inventory, and incorporation of findings from TCEQ's most recent field study of ozone formation, TexAQS II. Relying on the 2000 episode would likely result in the need to subsequently revise the SIP, and would delay the development of effective control strategies.

In addition to modeling, TCEQ must also analyze emissions data to develop ozone control strategies. To do so, TCEQ must incorporate the findings from TexAQS II into its SIP planning, and must also rely on the 2006 NO_X and VOC emissions inventory, which was not complete until the middle of 2008, and would therefore not allow for some early aspects of control strategy development until late 2008. It is important to use the 2006 inventory since it will provide the most accurate VOC emissions data, as a result of monitoring and testing requirements established in the HRVOC rules for flares, vents and cooling towers. The 2006 point source inventory represents years of efforts to improve emissions data, including more accurate speciation and reporting of VOC emissions. For details of these improvements, see TCEQ Comments at 5.

Due to the extensive controls already required for major sources in the HGB area, TCEQ may need to consider more stringent strategies that will require time for conducting more inventory and survey work on area sources, as well as for researching control technologies on sources that have not historically been regulated for ozone, or that are smaller than what has previously been regulated. More evaluation and stakeholder outreach may also be needed for control strategies that impact small businesses and sources not historically regulated for ozone. Issues being studied that could have an affect on control strategies include the role of ozone levels aloft in model performance and control strategy assessment, differences between measured on-road mobile source CO-to-NO_X ratios and those predicted by the national mobile source emissions model, MOBILE6, and indications that a great degree of variability exists in VOC emissions, with some sources emitting large quantities within a short period of time and also the general underestimation for many industrial sources of VOCs (recent field study information indicates VOCs may still be under-reported by a factor of 2 or more). As one commenter has pointed out, in the past when results and insights from field studies were not included in the development of attainment plans, the plans subsequently had to be revised. Moreover, if an earlier deadline is imposed, it would result in the loss of the full complement of modeled episode days, and diminish confidence that the control strategies would work under a range of meteorological conditions. Since different control strategies were being introduced in 2005 and 2006, eliminating the 2006 episodes would result in the loss of information about the effectiveness of these controls. A deadline prior to April, 2010 also would not allow sufficient time for rule development after identification of control strategies. The rulemaking process under the Texas Administrative Procedure Act, combined with TCEQ rulemaking practice, typically takes

about one year. Texas has also commented that sensitivity analyses to assess the benefits of selected controls also are not currently available.

In developing control measures, an extensive public participation process is needed, since emissions reductions will be required from all source categories. A shorter timeline would not allow sufficient input by community stakeholders and outside scientists, on such issues as data, modeling, and other analyses, as well as emissions factors. This input is important for the development of effective control strategies and their implementation. Thus, EPA finds that the April 2010 deadline is necessary to provide sufficient time to allow adequate modeling episodes and control strategies based on best available data.

Comment: A comment was received that if EPA is convinced that it will legitimately take until 2010 to complete the technical work to support the required demonstration of attainment, EPA should require TCEQ to work with local stakeholders to adopt available control measures on an expedited schedule.

Response: As noted above: (1) TCEQ has already initiated stakeholder meetings on additional control measures, and is implementing the Texas Emission Reduction Program and the AirCheckTexas program to reduce emissions; and (2) control measures will be adopted as expeditiously as practicable, and will be submitted with the attainment demonstration in 2010. Given the time necessary for updating the emissions inventory, episode modeling, and control strategy development adoption of significant numbers of new control measures cannot be expected earlier than April 2010.

Comment: We invited comments on a range of dates from December 15, 2008 to April 15, 2010 for a revised SIP submittal. Comments were received supporting April 15, 2010 as the submission date for a SIP revision. One commenter (TCEQ) recommended this date due to: (1) The extraordinarily complex nature of ozone formation in the HGB area; (2) the need to successfully model a large number of ozone days; (3) the new scientific information beginning to emerge from the Texas Air Quality Study II; (4) complicated issues associated with developing and implementing emission reduction measures; and (5) the need for extensive stakeholder involvement. TCEQ further stated that: (1) Requiring the state to submit an attainment demonstration any time before April 2010 does not change the attainment date nor does it advance the protection of public health; (2) an earlier submission date is counterproductive to protecting public health; (3) a December 2008 deadline would mean that all initial technical work on the HGB SIP would be discontinued; and (4) the SIP revision would contain little more than previous modeling and a control strategy package that relies on fleet turnover from federal rules. Texas also provided detailed justification for the April 15, 2010 submission date addressing: (1) Modeling, (2) control strategy development, (3) the stakeholder process, and (4) the reasonable further progress SIP.

Another commenter stated that: (1) The timeline requested by Texas is necessary in order to integrate recent field study data, new episodes, and state-of-the-art modeling; (2) imposing artificial deadlines would mean that key components would be omitted, which would all but guarantee a flawed plan; and (3) the result (of a flawed plan) would be a costly and wasteful regulatory re-work, which could delay, rather than accelerate attainment.

Response: We agree with these commenters that April 15, 2010 is appropriate as the submission date for a SIP revision due to: (1) The complexity in developing and implementing effective emission reductions for the area; and (2) the opportunity for a more robust attainment demonstration plan that relies on better data and modeling. Developing and implementing effective emission reductions for the area is complex due to its: (1) Complex coastal meteorology; (2) large urban population; and (3) large industrial area (4) the current underestimation issues of industrial emissions. With a SIP submission date of April 15, 2010, more recent data and modeling episodes may be used to identify control strategies and demonstrate attainment of the standard. In our December 31, 2007, proposal, we stated that the new attainment demonstration should be based on the best information available (72 FR 74252, 74254). A SIP revision submission date of April 15, 2010, allows for the best information to be used. See also section II above, and responses to comments above.

C. Relief of CAA Attainment Demonstration and Related Requirements

Comment: Several commenters stated that reclassification should not be a means to avoid meeting fundamental CAA requirements, and that Texas is therefore still required to complete and submit, as components of its May 2007 SIP, an adequate RACM analysis, an adequate attainment demonstration, supporting photochemical modeling, and contingency measures. Comments stated that ''Congress intended the reclassification process to be used as a last resort, [to be undertaken] after all [RACM] have been implemented and all best efforts undertaken to reduce emissions.''

Response: As we stated in the proposal, Texas has a continuing responsibility for certain elements of the moderate area requirements. EPA has stated that reclassification does not provide a basis for extending submission deadlines for SIP elements unrelated to the attainment demonstration that were due for the area's moderate classification. In June 2007, Texas submitted an 8-hour SIP to EPA that included the requirements of (1) a moderate area reasonable further progress demonstration (40 CFR 51.910), which includes contingency control measures if the area fails to meet reasonable further progress (CAA section 172(c)(9)); (2) a reasonably available control technology (RACT) demonstration (40 CFR 51.912); and (3) a 2002 emissions inventory (40 CFR 51.915). Other moderate area SIP requirements are currently being implemented. These include NSR rules (40 CFR part 165) and a vehicle inspection and maintenance program (40 CFR 51.905(a)(1)(i)). Also, as stated above, reclassification is not without consequences for the area. Reclassification to a severe designation will result in the HGB ozone nonattainment area being subjected to severe 8-hour ozone nonattainment area requirements, including New Source Review (NSR) and Title V permit requirements, in addition to applicable 1-hour requirements. For example, Texas will have to meet the more stringent reasonable further progress (RFP) reductions in VOC and NO_X emissions required by a severe classification (40 CFR 51.910). For other serious and severe area requirements, see section 182(c) and (d).

EPA disagrees with the commenters to the extent they believe that a full attainment demonstration plan including modeling, attainment contingency measures and RACM needs to be submitted and approved by the moderate area deadline. Once an area is reclassified it retains the SIP due date for certain SIP elements that applied for the area's initial classification. However it can receive a new date for the attainment demonstration and related elements, in addition to the SIP elements required under its new (higher) classification. It is EPA's belief that the CAA provides that, upon

reclassification, relief can be granted from the submittal deadline for the requirements of the lower classification related to the attainment demonstration. As a reclassified area the area is no longer obligated to demonstrate attainment by the date previously required for the prior classification. The area must then provide an attainment demonstration for the new classification, but must still demonstrate attainment as expeditiously as practicable. Such deadlines are determined on a case-by-case basis for each area and proposed and finalized through rulemaking. As discussed previously, we believe it is appropriate in this case to allow time to develop an attainment demonstration based on more complete information available through additional episode days and the TexAQS II study. This approach is balanced by the fact that the CAA provides for additional more stringent requirements to be placed upon a nonattainment area when it is given a higher classification. In addition, we expect that the additional time will provide for a more robust attainment demonstration. In the meantime, the State has made submittals to meet and/or is implementing the moderate area requirements not related to an attainment demonstration. When a nonattainment area is reclassified, the CAA attainment demonstration requirements of the new classification supersede those of the previous classification. In other words, once a nonattainment area has been reclassified and as a result has a new attainment deadline, the deadline applicable to the attainment demonstration under the previous classification no longer has any logical, practical or legal significance. The State has already demonstrated its inability to meet the moderate area deadline for attainment, and is preparing its new demonstration under the severe classification. Therefore, EPA is not evaluating the sufficiency of the attainment demonstration or RACM submissions made pursuant to the area's moderate classification, or imposing sanctions for insufficiency. EPA's conclusion not to require a moderate area attainment demonstration is logical, since the State is unable to demonstrate attainment by the moderate area attainment date, and the area is being reclassified. It is also consistent with its action in the voluntary reclassification of San Joaquin Valley, 69 FR 20550 (April 16, 2004).

As noted in EPA's proposal, Texas submitted contingency measures to be triggered if the area fails to meet reasonable further (RFP) progress under the moderate area requirements. 72 FR 74253. A commenter contends that the State's failure to include an attainment demonstration under its moderate area classification makes an attempt to include contingency measures impossible, arguing that such contingency measures can only be determined if they are surplus to the measures needed for attainment. For contingency measures to meet RFP, however, EPA will be able to evaluate and, if appropriate, approve these measures in advance of an attainment demonstration. If, when the attainment demonstration is submitted, it is determined that additional contingency measures are required to meet severe area RFP or attainment, EPA will require such measures. A commenter cited to the February 12, 2007 Thomas Diggs (Chief, Air Planning Section, EPA Region 6) letter to Joyce Spencer (TCEQ), which stated: ''EPA cannot approve any contingency measures unless and until the state makes an adequate demonstration that they are surplus to the measures needed for attainment.'' In response, EPA is clarifying Mr. Diggs statement to make explicit that it is limited it to the context of contingency measures for failure to attain. Contingency measures for failure to meet RFP are only those surplus to the RFP demonstration, and, as noted above, unlike contingency measures for attainment, EPA can evaluate such contingency measures in advance of the attainment demonstration.

One commenter contended that in the General Preamble EPA stated that when an area is reclassified it must submit and implement RACM consistent with the moderate area schedule. 57 FR 13537.

> ''[I]f an area that fails to submit a timely moderate area SIP is reclassified, this does not obviate the requirement that the area submit and implement RACM consistent with the moderate area schedule. Accordingly, the area could be subject to sanctions for its delay in submitting the RACM SIP requirement.''

EPA notes that the passage quoted above by the commenter is contained in the section of the General Preamble addressing the PM–10 standard, and does not relate to the ozone standard. In addition, this statement is at odds with statements elsewhere in the General Preamble about RACM being a component of an area's attainment demonstration under section 172(c)(1) (57 FR 13560), and is superseded by a much more extensive discussion of PM–10 RACM and Best Available Control Measures (BACM) in the Addendum to General Preamble for State Implementation Plans for Serious PM–10 Nonattainment Areas. 59 FR 41998, 42008–42011, (August 16, 1994). The Addendum makes clear that RACM, as distinguished from BACM, is to be analyzed ''according to what is reasonable in light of the overall attainment needs of the area.'' 59 FR 42011. The Addendum notes that the ''pronounced difference in timing for the serious area submittals * * * is to be contrasted with the timing for submittal of similar provisions for moderate areas. Under section 189(a)(2), both the RACM plans and the attainment demonstration for moderate PM–10 areas must as a general matter be submitted at the same time.'' The Addendum explains that the fact that BACM, unlike RACM, requires adoption and implementation before the attainment demonstration, shows that Congress intended BACM to be based on the feasibility of implementation rather than, as for RACM, the attainment needs of the area. 59 FR 42012. Thus it is clear that, for RACM for ozone, for the same reason that the deadline for an attainment demonstration should be extended when an area is reclassified, the deadline for RACM should also be extended. This is buttressed by EPA's interpretation, upheld by the United States Court of Appeals for the Fifth Circuit (Sierra Club v. EPA, 314 F.3d 735, 743–745 (5th Cir. 2002) and by the U.S. Court of Appeals for the D.C. Circuit (Sierra Club v. EPA, 294 F.3d 155, 162–163 (D.C. Cir. 2002), that the statute requires only implementation of RACM measures that would advance attainment. Thus RACM can only be determined in conjunction with an attainment demonstration. A commenter's contention that ''areas that are not attaining the NAAQS must implement all technologically and economically feasible control measures'' is at odds with the statute as interpreted by EPA and the courts. Moreover, the commenter's reliance for support on Delaney v. EPA, 898 F.2d 687 (9th Cir. 1990), is misplaced. Delaney was decided before the 1990 Amendments to the Clean Air Act were enacted and the General Preamble was issued, and it does not reflect the current statute and guidance. (See *Ober* v. *EPA*, 84 F. 3d 304 (9th Cir. 1996), noting that Delaney was decided before the 1990 Amendments and before EPA changed its guidance with respect to transportation control measures and RACM.) Delaney focused on a specific set of circumstances, applying requirements for attainment under a previous version of the statute and guidance, and it did not require attainment as expeditiously as

practicable with reasonably available control measures but rather attainment as soon as possible with all possible measures. It is not pertinent to evaluating the RACM requirement under the current version of the Act in the circumstances presented by HGB.

EPA believes it would be unreasonable to require the implementation of RACM before a determination can be made of what is ''reasonably'' available based on whether implementation will expedite attainment. EPA's statements in the General Preamble are consistent with this approach. In the General Preamble EPA repeatedly stated, that it would be unreasonable to require a plan to include the implementation of all technologically and economically available control measures even though such measures would not expedite attainment. General Preamble, 57 FR 13498, 13543, 13560 (April 16, 1992). Texas is in the process of developing an attainment demonstration that will ascertain which measures will expedite attainment. It would be unreasonable, in the meantime, to require implementation of all measures before a determination of their usefulness and necessity can be determined. Texas is not being excused from adopting RACM; Texas will make its RACM submission at the time it submits its attainment demonstration under the severe area classification. EPA will review the State's submission at that time

A commenter cites *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996), for the proposition that a moderate area that is reclassified as serious must comply with moderate area SIP requirements, and that reclassification does not delay or supersede existing SIP requirements. But Ober's discussion of the obligation to meet SIP requirements was not based on section 181(b)(3), but rather was in the context of the provisions governing the PM–10 standard, and was explicitly based on the consideration that there were separate requirements for the 24-hour and annual PM–10 standards. The Court concluded that given these two standards, the inability of the area to attain the annual PM–10 standard by the moderate area deadline, and resulting reclassification to serious, did not relieve the State of the obligation to meet the moderate area requirements of the separate 24-hour standard. The passage cited by the commenter, from footnote 2 of the opinion, makes clear that the moderate area PM–10 requirements referred to relate to the 24-hour standard. In the case of HGB, which involves the ozone standard, there is no such separate standard. In addition, the passage the commenter quotes from Ober cites section 7513a(b)(1), which merely states that a serious PM–10 nonattainment area must comply with moderate as well as serious area requirements. It does not address the issue of whether an area that has been voluntarily reclassified under the ozone standard must submit an attainment demonstration by a deadline that has been rendered obsolete by reclassification.

Comment: Comments were received that EPA has correctly deferred submittal requirements, as CAA attainment demonstration requirements of the new classification supersede requirements of the previous classification.

Response: We agree with the commenters that certain attainment-demonstration related requirements of the lower classification are superseded. See Responses above.

Comment: Comments were received that a reclassification to severe will release Texas from sanctions for failing to submit a proper SIP or meet the attainment deadlines of the former moderate classification. Comments stated that Texas should not be able to avoid any penalties for noncompliance by virtue of ''an improper reclassification''. A commenter stated that Congress intended the reclassification process to be used as ''a last resort''.

Response: Congress placed no limitations on a State's ability to request reclassification to a higher classification, and provided for no discretion for EPA to deny such a request. EPA believes that a voluntary reclassification is a legitimate method provided by the CAA to deal with the circumstances of HGB, as discussed earlier in these Responses. Since Texas submitted its request for reclassification in a timely fashion, EPA sees no reason to make any finding regarding whether or not Texas' moderate attainment plan demonstrated attainment or to apply sanctions at this time. Upon reclassification, the moderate area attainment demonstration-related requirements are superseded by the severe area attainment demonstration requirements. See Responses to Comments above. Texas has not been released from the obligation to comply with SIP submission deadlines for other moderate area requirements not related to the attainment demonstration.

Comment: A commenter stated that EPA contends that more stringent requirements accompanying the higher classification removes the incentive for states to request an improper reclassification with a later attainment date. The commenter states, however, that EPA acknowledges that because HGB was classified as severe under the 1-hour standard, many of the more stringent requirements are already being implemented. The commenter asserts that with the increased compliance burden removed, reclassification appears to be an effort by Texas to postpone attainment and sanctions.

Response: EPA does not agree that reclassification relieves Texas's compliance burden. Texas still confronts additional and more stringent requirements under a severe classification for the 8-hour standard, and must still attain the standard as expeditiously as practicable, and meet the requirements under its severe classification for RACM and RFP. These are important consequences of reclassification, and Texas's obligation to comply with these requirements under the 8-hour ozone standard is a significant one.

IV. Final Action

After fully considering all comments received on the proposed rule and pursuant to CAA section 181(b)(3): (1) The HGB area is reclassified as a severe nonattainment area for the 1997 8-hour ozone standard; and (2) we find that April 15, 2010, is the appropriate SIP submittal date for a revised SIP meeting the requirements for the severe area classification and demonstrating that the HGB area will attain the 1997 8-hour standard as expeditiously as practicable, but no later than June 15, 2019.

A revised SIP for the HGB area must include all the requirements for serious ozone nonattainment area plans, such as: (1) Enhanced ambient monitoring (CAA section 182(c)(1)); (2) an enhanced vehicle inspection and maintenance program (CAA section 182(c)(3)); (3) a clean fuel vehicle program or an approved substitute (CAA section 182(c)(4)), and (4) gasoline vapor recovery for motor vehicle refueling emissions (CAA section 182(b)(3)). The revised SIP must also meet the severe area requirements, including: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology (RACT) and reasonably available control measures (RACM) (40 CFR 51.912); (3) reasonable further progress reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (40 CFR 51.910); (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA sections 172(c)(9) and 182(c)(9)); (5) transportation control measures to offset emissions from growth in vehicle miles traveled (CAA section 182(d)(1)(A)); (6) reformulated gasoline

(CAA 211(k)(10)(D)); and (7) NSR permits (40 CFR part 165). See also the requirements for serious and severe ozone nonattainment areas set forth in CAA sections 182(c), 182(d) and 185. Because the HGB area was classified as severe under the 1-hour ozone standard, many of these requirements are currently being implemented.

The revised SIP for the HGB area must also contain adopted measures sufficient to achieve required reasonable further progress in emission reductions and to attain the 8-hour ozone NAAQS as expeditiously as practicable but not later than June 15, 2019. The new attainment demonstration should be based on the best information available.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to Executive Order 12866. Voluntary reclassifications under section 181(b)(3) of the CAA are based solely on requests by the State, and EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

In addition, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). And these actions do 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), because EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it grants a voluntary reclassification, and EPA's approval is mandatory.

As discussed above, a voluntary reclassification under section 181(b)(3) of the CAA is based solely on the request of a state, and EPA is required to grant such a request. In this context, it would be inconsistent with applicable law for EPA, when it grants a state's request for a voluntary reclassification, to use voluntary consensus standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) also do not apply. In addition, this rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (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. As stated earlier in this Notice, EPA is taking final action granting the State's request for a voluntary reclassification. The plain language of section 181(b)(3) of CAA mandates that we ''shall'' approve such a request if it is made in accordance with the requirements of the Act, and, as such, does not provide the Agency with the discretionary authority to address concerns raised outside the Act, including those contained in Executive Order 12898.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to reclassify the HGB area as a severe ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 18, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.344 the table entitled ''Texas—Ozone (8-hour Standard)'' is amended by revising the entries for Houston-Galveston-Brazoria, TX to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Houston-Galveston-Brazoria, TX:				
Brazoria County		Nonattainment	(4)	Subpart 2/Severe 15.
Chambers County		Nonattainment	(4)	Subpart 2/Severe 15.
Fort Bend County		Nonattainment	(4)	Subpart 2/Severe 15.
Galveston County		Nonattainment	(4)	Subpart 2/Severe 15.
Harris County		Nonattainment	(4)	Subpart 2/Severe 15.
Liberty County		Nonattainment	(4)	Subpart 2/Severe 15.
Montgomery County		Nonattainment	(4)	Subpart 2/Severe 15.
Waller County		Nonattainment	(4)	Subpart 2/Severe 15.
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * * *
[4] October 31, 2008.

* * * * *

[FR Doc. E8–22685 Filed 9–30–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0381; FRL–8383–9]

Aspergillus flavus NRRL 21882; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the fungal active ingredient *Aspergillus flavus* NRRL 21882 on the food and feed commodities of corn: Corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover when applied/used as an anti-fungal agent to displace aflatoxin-producing *Aspergillus flavus* from treated commodities. Circle One Global, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* NRRL 21882.

DATES: This regulation is effective October 1, 2008. Objections and requests for hearings must be received on or before December 1, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0381. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0381 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 1, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0381, by one of the following methods.

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 18, 2008 (72 FR 34734) (FRL–8366–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F7302) by Circle One Global, Inc. (Circle One), P.O. Box 28, Shellman, GA 39886–0028. The petition requested that 40 CFR 180.1254 be amended by expanding the existing exemption from the requirement of a tolerance for residues of *Aspergillus flavus* NRRL 21882 on corn. A summary of the petition prepared by the petitioner Danny Gay, Acta Group, 1203 Nineteenth St., NW., Suite 300, Washington DC 20036, on behalf of Circle One Global, Inc., was included in the docket at *www.regulations.gov* (Docket No. EPA–HQ–OPP–2008–0381). On July 9, 2008, Acta Group posted a comment to this docket to clarify that the pending amendment to the current exemption from tolerance for *Aspergillus flavus* NRRL 21882 is intended to apply to field corn, sweet corn, and pop corn as harvested. The tolerance exemption is being granted for these food commodities on the basis of the toxicology studies which support all food commodities.

A temporary exemption from the requirement of tolerance for *Aspergillus flavus* NRRL 21882 on corn currently exists at 40 CFR 180.1254(b). That temporary tolerance is connected with Experimental Use Permit No. 75624-EUP-2 and is set to expire on May 2, 2009. The Agency issued this temporary rule on May 16, 2007, after determining that the temporary exemption from the requirement of tolerance was safe (72 FR 27460, May 16, 2007).

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Aspergillus flavus NRRL 21882 is a non-aflatoxin-producing fungal active ingredient for use in microbial pesticides. It will be used to displace the ubiquitous *Aspergillus flavus* group of microbes, many of which can produce aflatoxin, a potent carcinogen. The toxicological profile of this conditionally registered active ingredient has been previously described in the final rule of the **Federal Register** of June 30, 2004, (69 FR 39341) (FRL–7364–2). On the basis of those studies, the exemption from tolerance of *Aspergillus flavus* NRRL 21882, a non-aflatoxin-producing strain of *Aspergillus flavus*, on peanuts was established in 40 CFR 180.1254.

The acute oral toxicology studies provided for peanuts are cited in support of the tolerance exemption for field, pop and sweet corn. Those studies placed *Aspergillus flavus* NRRL 21882 in Toxicity Category IV for acute oral effects. This active ingredient was not toxic, infective or pathogenic to mammals on the basis of acute oral and pulmonary studies. That database supporting the exemption from tolerance on peanut also supports the proposed exemption of this active ingredient on corn. Even though the active ingredient has demonstrated toxic and infective effects in the acute intraperitoneal studies, there was clearance from all tissues by day 22. The

results of these studies were considered a worse case scenario relevant to issues of occupational exposure for which the agency required appropriate Personal Protective Equipment (PPE) to mitigate risk to workers. In addition, the pesticide is not to be applied to residential areas, but rather to commercial corn fields. Thus, potential non-occupational exposure is not expected. For a summary of the studies and discussions of dietary and non-dietary, non-occupational dermal and inhalation exposures, as well as aggregate and cumulative, exposures, and potential endocrine effects refer to the aforesaid June 30, 2004 final rule (69 FR 39341). All studies met, and continue to meet, the safety standards of the Food Quality Protection Act (FQPA) of 1996. This pesticide has been used for more than a decade in experimental laboratory and field trials without any reports of adverse dermal irritation or hypersensitivity effects.

The Agency has determined that the previously reviewed acute toxicological studies do support the proposed exemption from tolerance of *Aspergillus flavus* NRRL 21882 on corn. Summaries of the rationales for this determination may be found in the aforesaid **Federal Register** final rule of June 30, 2004. No further toxicological data are required for this exemption from the requirement of a tolerance for *Aspergillus flavus* NRRL 21882 on corn. The applicant must, however, report any incidents of hypersensitivity, or any other adverse effects to comply with the requirements of FIFRA section 6(a)(2).

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

In evaluating dietary exposure to *Aspergillus flavus* NRRL 21882, EPA considered exposure under the petitioned-for tolerances as well as the existing *Aspergillus flavus* NRRL 21882 tolerance for peanuts in (40 CFR 180.1254(a)).

1. *Food*. Pesticides containing *Aspergillus flavus* NRRL 21882 are to be applied aerially to corn once per season at the first sign of corn tasseling. Because there is a long period of time between application and harvesting, residues of *Aspergillus flavus* NRRL 21882 are not expected to be greater than the normal background levels, when the food commodity is harvested. In addition, corn and its byproducts will be subject to several stages of food processing and manufacturing. These stages include washing, threshing, dehulling, dry and wet milling, and fractionation by aspiration and the other food manufacturing and processing technologies which are associated with preparing and marketing corn as a food commodity. Thus, because of the low application rate and food processing steps, this naturally occurring active ingredient is not expected to be present at greater than background levels on consumable corn commodities. Even if it is present, it is not likely to cause harm because it is not toxic, infective or pathogenic as demonstrated in the acute oral toxicity study in rats.

These observations from the acute toxicology tests are also relevant to dietary exposure of human adults, infants and children to peanuts treated with *Aspergillus flavus* NRRL 21882. The Agency, taking both crops into consideration, concluded that the aggregate exposure to this active ingredient with low toxicity potential will not cause harm if the pesticide is used as labeled.

2. *Drinking water exposure*. The analysis provided for the tolerance exemption for residues of *Aspergillus flavus* NRRL 21882 on peanuts also supports the drinking water exposure analysis for corn. As in the case of peanuts, the pesticide is to be applied in drought ridden areas and is not directly applied to crops grown in water. Thus accumulation in drinking water is not expected. Percolation through the soil and municipal treatment of drinking water are expected to preclude exposure of the U.S. population, infants and children to residues of the pesticide. Thus incremental exposure via drinking water is not expected when both corn and peanuts are treated.

B. Other Non-Occupational Exposure

Non-occupational dermal and inhalation exposure is expected to be minimal to non-existent when the microbial pesticide containing the active ingredient *Aspergillus flavus* NRRL 21882 is used as labeled on corn and peanuts. For both crops, the pesticide is to be applied to agricultural sites not in the proximity of residential areas, schools, nursing homes or daycares. While there is a potential for dermal sensitivity to the *Aspergillus* group of fungi, the specific pesticide at issue here, *Aspergillus flavus* NRRL 21882, is not intended for residential applications. Instead, it is to be applied once per growing season to commercial agricultural fields. Pesticide drift is not expected to residential areas from the agricultural applications of the granular End-use Product which is applied at a very low rate (approximately 1 gram or 0.002 pound of active ingredient per acre). Thus, non-occupational residential exposure is expected to be minimal to non-existent.

In summary, the Agency considered dietary exposure (including drinking water), as well as non-occupational exposure to treated peanuts and corn, and concluded that aggregate exposure to *Aspergillus flavus* NRRL 21882 will not cause harm to the U.S. adult, population, infants and children.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to *Aspergillus flavus* NRRL 21882 and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Based on tests in mammalian systems, *Aspergillus flavus* NRRL 21882 does not appear to be toxic to humans via dietary and pulmonary exposure. Therefore, the requirement to consider cumulative effects does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

For the same reasons as stated in the rule issued on June 30, 2004 (69 FR 39341), the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *Aspergillus flavus* NRRL 21882.

VII. Other Considerations

A. Endocrine Disruptors

See **Federal Register**, June 30, 2004, (69 FR 39341).

B. Analytical Method

See **Federal Register**, June 30, 2004, (69 FR 39341).

C. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *Aspergillus flavus* NRRL 21882 on corn.

VIII. Conclusions

In summary, the Agency has determined that, based on available data

and information, there is a reasonable certainty that the use of *Aspergillus flavus* NRRL 21882 on field, sweet and pop corn will not cause harm to the U.S. adult, children and infant populations via dietary, aggregate and cumulative exposure. Thus, an exemption from the requirement of a tolerance on field, sweet and pop corn is being granted.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1254 is amended by revising paragraph (b) to read as follows:

§ 180.1254 Aspergillus flavus NRRL 21882; exemption from requirement of a tolerance.

* * * * *

(b) An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 on corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover.

[FR Doc. E8–22957 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1534–CN]

42 CFR Part 413

RIN 0938–AP11

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the August 8, 2008 **Federal Register** entitled, ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2009.''

DATES: *Effective Date:* This correction is effective October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–17948 of August 8, 2008 (73 FR 46416), there were two technical errors that this notice serves to identify and correct. The corrections in this correction notice are effective as if they had been included in the document published on August 8, 2008. Accordingly, the corrections are effective October 1, 2008.

II. Summary of Errors

On page 46430 of the August 8, 2008 final rule, we are correcting the title of Table 10. This table illustrates the skilled nursing facility (SNF) prospective payment system (PPS) payment rate computations for a hypothetical ''XYZ'' SNF located in Cedar Rapids, IA. In the table's title, the wage index value for Cedar Rapids, IA is incorrectly identified as 0.8924. Accordingly, in section III of this document (''Correction of Errors''), we are correcting the wage index value in the title of Table 10 to reflect the correct wage index value of 0.8919. We note

that the entries for this value that appear in the ''wage index'' column of the table itself, as well as the corresponding entry for CBSA 16300 in Table 8 (''FY 2009 Wage Index for Urban Areas Based on CBSA Labor Market Areas,'' which appeared as an addendum to the August 8, 2008 final rule), both correctly reflect this value as 0.8919.

In addition, in the addendum to the August 8, 2008 final rule, we are revising an entry in Table 9 (''FY 2009 Wage Index Based on CBSA Labor Market Areas for Rural Areas'') in order to correct a technical error made to the wage data for one inpatient hospital provider in rural New Hampshire. We are revising the wage index value displayed in Table 9 for rural New Hampshire from ''1.0182'' to the corrected value of ''1.0219''. Since this revision involves only a single entry in Table 9, we are not republishing the table in its entirety in this notice; however, we note that the corrected version of this table is available on the SNF PPS Web site, which can be accessed online at *http://www.cms.hhs.gov/SNFPPS/*.

III. Correction of Errors

In FR Doc. E8–17948 (73 FR 46416), make the following corrections:

1. On page 46430, in Table 10, the wage index value ''0.8924'' displayed in the title is revised to read ''0.8919''.
2. On page 46462, in Table 9, in the wage index column for New Hampshire, State code 30, the wage index value ''1.0182'' is revised to read ''1.0219''.

IV. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a proposed rule in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment methodologies and policies, and this correction notice is intended solely to ensure that the FY 2009 SNF PPS final rule accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2009 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as 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: September 29, 2008.

Ashley Files Flory,

Deputy Executive Secretary to the Department.

[FR Doc. E8–23253 Filed 9–30–08; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Satellite Communications

CFR Correction

In title 47 of the Code of Federal Regulations, parts 20 to 39, revised as of October 1, 2007, in § 25.208, on page 239, in Table 1G in paragraph (g) and, on page 240, in Table 1H in paragraph (h) make the following change:

For each entry in the tables, remove the number ''40'' from the third column, ''Percentage of time during which $EPFD_{down}$ level may not be exceeded'' and add it to the fourth column, ''Reference bandwidth (kHz)''.

[FR Doc. E8–23115 Filed 9–30–08; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 08–192]

Network Affiliated Stations Alliance (NASA) Petition for Inquiry Into Network Practices and Motion for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Notice of petition for inquiry.

SUMMARY: NASA and the Networks request that the Commission affirm a number of basic principles relating to the Commission rules governing network/affiliate relationships to avoid future disputes. Since that time, each of the Networks engaged in constructive discussions with its respective affiliates and revised its current standard affiliation agreement to address the central issues raised by NASA. Accordingly, NASA and the Networks agree that a Commission ruling with respect to those particular contract provisions is no longer necessary. Pursuant to the Commission's rules, we grant NASA's request for declaratory ruling in part and grant the Joint Request in full.

DATES: October 1, 2008.

ADDRESSES: You may submit comments, identified by FCC 08–192, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Holly Saurer, *Holly.Saurer@fcc.gov*, of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Declaratory Ruling in FCC 08–192, adopted August 20, 2008, and released September 3, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Final Rule

I. Introduction

1. The Commission has before it a Petition for Inquiry into Network Practices (Petition), a Motion for Declaratory Ruling (Motion), and a Joint Request of Network Affiliated Stations Alliance (NASA) and the ABC, CBS, NBC and Fox Television Networks (Networks) to Resolve NASA Petition. NASA and the Networks request that the Commission affirm a number of basic principles relating to the Commission rules governing network/affiliate relationships to avoid future disputes. Pursuant to § 1.2 of the Commission's rules, we grant NASA's request for declaratory ruling in part and grant the Joint Request in full.

II. Background

2. In its Petition, NASA asked the Commission to institute an inquiry as to whether certain alleged practices of the Networks regarding their affiliates were consistent with the Commission's network rules, the Communications Act, and the public interest. NASA subsequently filed the Motion, in which it sought a declaratory ruling that certain specified practices engaged in by the Networks are inconsistent with the Communications Act and the Commission's rules and policies. In response, the Networks contended that it would be improper for the Commission to involve itself in the private contractual relationships between networks and affiliates.

3. On January 19, 2005, NASA filed a Third Update of Record and Continued Request that Commission Issue Declaratory Ruling on Basic Principles in which it stated that each of the Networks has reformed its contracts to address the central issues raised by NASA. At the same time, NASA asked the Commission to clarify the meaning of the existing network/affiliate rules, consistent with the reformed affiliation agreements. In response, the Networks asked the Commission to reject NASA's request and to close this proceeding, arguing that there is no longer any basis for Commission action.

4. On June 9, 2008, NASA and the Networks filed the Joint Request, stating that they had revised their standard affiliation agreements to address the issues raised by NASA with respect to particular contractual provisions, and that a Commission ruling regarding the resolved contractual issues is unnecessary. Nevertheless, they state that ''NASA and the Networks have a mutual interest in avoiding future controversies regarding the meaning of the Commission's network/affiliate rules and in assuring that the rules of the road for the network/affiliate relationship are clear.'' The parties thus request that the Commission issue an order ratifying a number of principles ''with which both NASA and the Networks agree, consistent with the revisions to the standard affiliation agreements by the Networks and the amendments negotiated by the Networks and their affiliates to their current affiliation agreements.''

III. Discussion

5. Under § 1.2 of the rules, the Commission ''may * * * issue a declaratory ruling terminating a controversy or removing uncertainty.'' The Commission has broad discretion whether to issue such a ruling. We agree with NASA and the Networks that additional guidance concerning licensee control, the right-to-reject rule, and the option-time rule would be helpful to avoid future disputes, and that the principles identified below are consistent with the Act and our rules.

A. Licensee Control

6. Section 310(d) of the Communications Act prohibits the direct or indirect transfer of control of any station license to another entity without a Commission finding that ''the public interest, convenience, and necessity will be served thereby.'' We affirm that the following principle identified in the Joint Request is consistent with the Act and the Commission's rules:

- Affiliates, as the licensees of local television stations, must retain ultimate control over station programming, operations and other critical decisions with respect to their stations, and network affiliations must not undercut this basic control. Retention of this control by Commission licensees is required by section 310(d) of the Communications Act and the Commission's rules.

B. Right-to-Reject Rule

7. To ensure that licensees retain sufficient control over programming to fulfill their obligation to operate in the public interest, the Commission's right-to-reject rule prohibits a television broadcast station from entering into ''any contract, arrangement, or understanding, express or implied, with a network organization'' that prevents or hinders the station from ''[r]ejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest'' or from ''[s]ubstituting a program which, in the station's opinion, is of greater local or national importance.''

8. We affirm that the following principles relating to the right-to-reject rule identified in the Joint Request are consistent with the Act and the Commission's rules:

- Pursuant to § 73.658(e) of the Commission's rules, networks and their affiliates are prohibited from ''having any contract * * * which, with respect to programs offered or already contracted for pursuant to an affiliation contract, prevents or hinders the station from: (1) Rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) Substituting a program which, in the station's opinion, is of greater local or national importance.'' This language does not give an affiliate the unfettered right to preempt network programs, but where a preemption is made pursuant to one of the two prongs of the right-to-reject rule, the economic consequence to the affiliate is irrelevant.
- Consistent with the Commission's right-to-reject rule, affiliation agreements should not include provisions that limit right-to-reject preemptions for ''greater local or national importance'' to breaking news events or any other specific type of programming. Affiliation agreements should not include provisions that prevent affiliates from rejecting a program as ''unsatisfactory or unsuitable or contrary to the public interest''

because they have carried a similar network program in the past. Affiliation agreements should not include provisions that impose monetary or non-monetary penalties on affiliates based on preemptions protected by the right-to-reject rule. Affiliation agreements should not include provisions that subject right-to-reject preemptions to, or count them against, contractual preemption limits (or ''baskets'') (though baskets are perfectly appropriate for preemptions not protected by the right-to-reject rule).

C. Option-Time Rule

9. The Commission's option-time rule proscribes any clause in an affiliation agreement that ''prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.'' In its Petition, NASA argued that certain contract provisions, with respect to both analog and digital broadcasting, violated the option-time rule by allowing networks to reserve an option to use an affiliate's broadcast time without committing to supply programming for the optioned time. To clarify the reciprocal obligations of networks and affiliates under the Commission's option-time rule, we affirm that the following principles set forth in the Joint Request are consistent with the Act and our rules:

• Consistent with the option-time rule, affiliation agreements should not include provisions that result in the optioning of the station's time to the network organization or that have the same restraining effect as time optioning. Network affiliation agreements may not, under the Commission's option-time rule, obligate stations to carry a network's programming or other content during certain time periods without reciprocally obligating the network to provide the content for those time periods. Similarly, network affiliation agreements may not require affiliates to carry, at some unspecified future date, unspecified digital content that the network may (or may not) choose to offer.

IV. Ordering Clauses

10. Accordingly, *it is ordered* that the Network Affiliated Stations Alliance's Motion for Declaratory Ruling filed June 22, 2001 *is granted in part* as discussed above.

11. *It is further ordered* that the Joint Request *is granted* and that this proceeding *is terminated*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–23152 Filed 9–30–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176, 178, 179, and 180

[Docket No. PHMSA–2008–0227 (HM–244A)]

RIN 2137–AE40

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes.

DATES: Effective date: October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA annually reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to identify typographical and other errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors; incorrect CFR references and citations; an incorrect address; inaccurate office names; inconsistent use of terminology; misstatements of certain regulatory requirements; and inadvertent omissions of information. In addition, this final rule revises the address for PHMSA to indicate the new location for the headquarters office. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of Title 49.

II. Section by Section Review

The following is a summary by section of the major changes made in this final rule. The summary does not include minor editorial corrections such as punctuation errors, or similar minor revisions.

Part 171

Section 171.3

This section prescribes requirements for transporting hazardous waste under the HMR. Paragraph (b)(1) requires each motor vehicle to be marked in accordance with 49 CFR 390.21 and 1058.2. Because § 1058.2 no longer exists, in this final rule we are removing this reference in paragraph (b)(1).

Section 171.7

Paragraph (a) of § 171.7 lists materials incorporated by reference into the HMR. In paragraph (a)(3), we are correcting the mailing address for the American Pyrotechnic Association.

Paragraph (b) of § 171.7 lists information materials that are not incorporated by reference. In a final rule published on January 28, 2008 (Docket No. 05–21812 (HM–218D); 73 FR 4699, effective October 1, 2008), we added in paragraph (b) an entry for the Compressed Gas Association's (CGA's) publication, CGA C–1.1 in § 171.7(b). A new paragraph (g)(6) in § 180.205 listed CGA C–1.1 as an example of training material that may be used by persons who requalify cylinders using the volumetric expansion test method. Following the publication of the HM–215D final rule, we received an appeal from Hydro-Test (PHMSA–2005–21812–0025) asking us to either remove this reference to CGA C–1.1 or add examples of other training materials that may be used. Hydro-Test noted that referencing only the CGA publication in the HMR could suggest that other training materials are not acceptable. We added CGA C–1.1 as an example of guidance material that may be used to assist requalifiers in setting up their cylinder training procedures and recordkeeping requirements. The publication is not a stand alone tool for training persons on how to perform requalification of cylinders using the volumetric expansion test method. However, to alleviate confusion for cylinder requalifiers, in this final rule, we are removing the new entry for CGA C–1.1 from § 171.7(b) and paragraph (g)(6) from § 180.205.

Section 171.8

This section contains definitions for terms used in the HMR. We inadvertently omitted replacing the name ''Diagnostic specimens'' with the name ''Biological substances, category B'' when we revised the HMR to harmonize its infectious substance requirements with international requirements and removed the name ''Diagnostic specimens'' under Docket No. PHMSA–2004–16895 (HM–226A; 71 FR 32244, 6/2/06). In this final rule, we are correcting this oversight. Also, we are revising the definitions for ''Elevated temperature material'' and ''Liquid phase'' to specify the metric conversion of 100 °F as 38 °C for consistency throughout the HMR and with that specified in the American Society for Testing and Materials (ASTM) Standard ASTM D 4359, ''Standard Test Method for Determining Whether a Material is a Liquid or a Solid,'' which the HMR incorporates by reference under § 171.7.

Section 171.23

This section prescribes requirements for specific materials and packagings transported under the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), International Maritime Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), and the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material (IAEA Regulations). In this final rule, we are revising paragraph (a)(3)(iii) to correct the reference ''(a)(3)'' to ''(a)(4).''

Section 171.25

This section prescribes additional requirements for the use of the IMDG Code under the HMR. In this final rule, we are correcting several inadvertent errors in this section. In paragraph (b)(1), we are revising the regulatory text to clarify that the segregation requirements in Part 7 of the IMDG Code may be utilized for both rail and highway transportation. The rail mode was inadvertently removed in the printing of the HM–215F final rule published on May 3, 2007. We are also correcting the word ''subpart'' to read ''subchapter'' in the second sentence of this paragraph, and the reference to ''Part 7, Chapter 2,'' of the IMDG Code to read ''Part 7, Chapter 7.2'' in the last sentence. In paragraph (b)(2), we are clarifying that the paragraph applies to transportation by vessel.

Part 172

In the heading to Part 172, we are adding the words ''Security Plans'' to reflect the security plan requirements in Subpart I of Part 172.

Section 172.201

This section prescribes requirements on the preparation and retention of shipping papers. Paragraph (a)(1)(iii) is corrected to clarify the use of the letter ''X'' to identify hazardous materials on a shipping paper. The clarification allows the letter ''X'' to be placed in a column titled ''HM'' appearing before the *basic* shipping description instead of the *proper* shipping name of a hazardous material to recognize that the identification number may appear first in the basic shipping description as provided in § 172.202(b).

Section 172.202

This section prescribes requirements for shipping descriptions on shipping papers. In paragraphs (a)(5) and (a)(6)(ii), we are inserting the U.S. standard measurement conversions after the metric measurements for clarity.

Section 172.203

This section prescribes additional description requirements for hazardous materials on shipping papers. In this final rule, we are correcting the examples provided in this section as follows:

- We are revising paragraph (c)(2) to reflect in the example the basic shipping description sequence prescribed in § 172.202(b), with the UN identification number appearing first, and to correct the example of the basic description for ''Allyl alcohol'' to state that this material is a Zone B toxic inhalation hazard.
- We are revising paragraph (d)(1) to correct the spelling of the word ''radionuclides'' in the second sentence.
- We are revising paragraph (i)(2), which contains additional shipping paper description requirements for flammable liquids transported by vessel, to reflect a flash point at 60 °C (140 °F) in place of 61 °C for consistency with the provisions contained in 49 CFR 173.120(a) and paragraph 5.4.1.4.3 of the IMDG Code.
- Paragraph (k) requires the use of a technical name with a proper shipping name designated as generic with the letter ''G'' in Column 1 of the § 172.101 Table. We are making a minor editorial revision to the last sentence in paragraph (k) and adding two new sentences to refer readers to the definition of ''Technical name'' in § 171.8 and to other relevant information in § 172.301.

Section 172.320

This section prescribes the marking requirements for explosive hazardous materials. In paragraph (b), we are correcting the reference to the regulation requiring a product code for commercial explosives from ''27 CFR part 55'' to read ''27 CFR part 555.''

In addition, we are removing current paragraph (e)(4), which contains an expired transitional provision, and redesignating current paragraph (e)(5) as paragraph (e)(4).

Section 172.704

This section prescribes training requirements for hazmat employees. In paragraph (a)(2)(ii), we are revising the reference to ''§§ 171.11 and 171.12'' to read ''authorized by subpart C of part 171 of this subchapter'' to be consistent with revisions adopted in the final rule issued under Docket No. PHMSA–2005–24131 (HM–215F, 72 FR 25162, 3/5/07).

Part 173

Section 173.21

This section prescribes the hazardous materials and packages that are forbidden in transportation. In this final rule, we are revising paragraph (f)(3) to clearly state that approvals issued by the Bureau of Explosives are no longer valid.

Section 173.25

This section prescribes requirements for transporting hazardous materials packages in overpacks. In this final rule, we are removing the second sentence in paragraph (a)(4) because it contains an expired compliance date.

Section 173.219

This section prescribes requirements for transporting life-saving appliances and matches. In this final rule, we are amending paragraph (a) by replacing the word ''movement'' with ''shifting'' to clarify the devices must be placed in inner packagings that are packed in outer packagings in a manner to prevent the devices from shifting within the outer packaging.

Section 173.227

This section prescribes requirements for packaging poisonous-by-inhalation materials, in Division 6.1, Packing Group I, Hazard Zone B. We are revising paragraph (b) to include UN 6HH1 composite packagings with an inner protective plastic drum. This revision was inadvertently omitted in a final rule issued under Docket No. RSPA–04–

17036 (HM–215G, 69 FR 76043, 12/20/04).

Section 173.308

This section sets forth requirements for the transportation of lighters. In this final rule, we are revising paragraph (b)(3)(ii) to specify the metric conversion of 100 °F as 38 °C for consistency throughout the HMR.

Part 175

Section 175.30

This section prescribes requirements for inspecting hazardous materials shipments aboard an aircraft. A capitalization error is corrected in paragraph (a)(2). In paragraph (a)(3), we are revising the reference to § 171.11 to read ''as authorized by subpart C of part 171 of this subchapter'' to be consistent with the revisions adopted under HM–215F.

Part 176

Section 176.83

This section prescribes segregation requirements for hazardous materials transported by vessel. In this final rule, we are revising paragraph (b) to clarify that although Column 1 of Table § 176.83(b) is titled ''Class,'' it also lists certain hazard class divisions.

Part 178

Section 178.36

This section contains the design and manufacture requirements for DOT 3A and 3AX seamless steel cylinders. In paragraph (a)(2), we are correcting the wording ''seamless stainless steel cylinder'' to remove the word stainless, and in the first sentence in paragraph (f), the wording ''service pressure less than 900 pounds'' to read ''service pressure less than 900 psig''.

Section 178.275

This section prescribes design and manufacture standards for UN portable tanks intended for the transportation of liquid and solid hazardous materials. In the HM–215G final rule, paragraph (i)(2), the introductory text was revised to clarify the combined delivery capacity of a UN portable tank's relief system. However, the amendatory language incorrectly stated that paragraph (i)(2) was revised. As a result, all the vent capacity formulas and tables referenced in the paragraph were removed. We are reinstating paragraphs (i)(2)(i)–(iv) in this final rule. In addition, in paragraph (d)(3), the reference to ''(c)(2)'' is corrected to read ''(d)(2).''

Section 178.605

This section prescribes the hydrostatic test requirements for non-bulk UN standard packagings. In this final rule, we are relocating the last sentence in paragraph (d)(3) requiring the performance of a pressure test on packagings intended to contain Packing Group I hazardous materials at a minimum test pressure of 250 kPa (36 psig) to paragraph (d) introductory text, preceding the list of methods contained in paragraphs (d)(1)–(d)(3). We are making this revision to clarify that this pressure test requirement applies regardless of the method chosen to determine the pressure.

Part 179

Section 179.400–18

This section prescribes pressure test requirements for the inner tanks of DOT–113 and DOT–107A cryogenic liquid tank car tanks and seamless steel tanks. Paragraph (a) is revised to specify the metric conversion of 100 °F as 38 °C for consistency throughout the HMR.

Part 180

Section 180.209

This section prescribes requirements for the periodic requalification of DOT specification cylinders. We are revising paragraph (l) introductory text to change ''§ 171.12a'' to correctly reference §§ 171.12(a) and 171.23(a), and paragraph (l)(2) to correctly reference certain export requirements contained in § 171.23(a)(4).

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on state and local governments. PHMSA is not aware of any state, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 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 the objectives of the rule.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

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.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.3, paragraph (b)(1) is revised to read as follows:

§ 171.3 Hazardous waste.

* * * * *

(b) * * *

(1) Has marked each motor vehicle used to transport hazardous waste in accordance with § 390.21 of this title even though placards may not be required;

* * * * *

■ 3. In § 171.7, in the table in paragraph (a)(3), in the first column, under ''American Pyrotechnics Association,'' revise the organization's mailing address to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * * *	*
American Pyrotechnics Association (APA), P.O. Box 30438, Bethesda, MD 20824, (301) 907–8181, www.americanpyro.com:	
* * * * * *	*

* * * * *

■ 4. In § 171.8, the definition for ''Diagnostic specimen'' is removed, a definition for ''Biological substance, category B'' is added in appropriate alphabetical order, and the definitions for ''Elevated temperature material'' and ''Liquid phase'' are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Biological substances, Category B. See § 173.134 of this subchapter.

* * * * *

Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(1) Is in a liquid phase and at a temperature at or above 100 °C (212 °F);

(2) Is in a liquid phase with a flash point at or above 38 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point; or

(3) Is in a solid phase and at a temperature at or above 240 °C (464 °F).

* * * * *

Liquid phase means a material that meets the definition of liquid when evaluated at the higher of the temperature at which it is offered for transportation or at which it is transported, not at the 38 °C (100 °F) temperature specified in ASTM D 4359 (IBR, see § 171.7).

* * * * *

■ 5. In § 171.23, paragraph (a)(3)(iii) is revised to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) * * *

(3) * * *

(iii) The cylinder is not refilled for export unless in compliance with paragraph (a)(4) of this section.

* * * * *

■ 6. In § 171.25, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 171.25 Additional requirements for the use of the IMDG Code.

* * * * *

(b) * * *

(1) Unless otherwise excepted, a shipment must conform to the requirements in part 176 of this subchapter. For transportation by rail or highway prior to or subsequent to transportation by vessel, a shipment must conform to the applicable requirements of parts 174 and 177 respectively, of this subchapter, and the motor vehicle or rail car must be placarded in accordance with subpart F of part 172 of this subchapter. When a hazardous material regulated by this subchapter for transportation by highway is transported by motor vehicle

on a public highway or by rail under the provisions of subpart C of part 171, the segregation requirements of Part 7, Chapter 7.2 of the IMDG Code are authorized.

(2) For transportation by vessel, the stowage and segregation requirements in Part 7 of the IMDG Code may be substituted for the stowage and segregation requirements in part 176 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 7. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 8. The heading to part 172 is revised to read as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 9. In § 172.201, paragraph (a)(1)(iii) is revised to read as follows:

§ 172.201 Preparation and retention of shipping papers.

(a) * * *

(1) * * *

(iii) Must be identified by the entry of an ''X'' placed before the basic shipping description required by § 172.202 in a column captioned ''HM.'' (The ''X'' may be replaced by ''RQ,'' if appropriate.)

* * * * *

■ 10. In § 172.202, paragraph (a)(5) introductory text and paragraph (a)(6)(ii) are revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(5) Except for transportation by aircraft, the total quantity of hazardous materials covered by the description must be indicated (by mass or volume, or by activity for Class 7 materials) and must include an indication of the applicable unit of measurement, for example, ''200 kg'' (440 pounds) or ''50 L'' (13 gallons). The following provisions also apply:

* * * * *

(6) * * *

(ii) For chemical kits and first aid kits, the total net mass of hazardous materials must be shown. Where the kits contain only liquids, or solids and liquids, the net mass of liquids within the kits is to be calculated on a 1 to 1 basis, i.e., 1 L (0.3 gallons) equals 1 kg (2.2 pounds);

* * * * *

■ 11. In § 172.203, the following amendments are made:

■ a. Paragraphs (c)(2), (d)(1), (i)(2), and the last sentence in paragraph (k) introductory text are revised, and

■ b. At the end of paragraph (k) introductory text, two new sentences are added.

The revisions and addition read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) * * *

(2) The letters ''RQ'' must be entered on the shipping paper either before or after the basic description required by § 172.202 for each hazardous substance (see definition in § 171.8 of this subchapter). For example: ''RQ, UN 1098, Allyl alcohol, 6.1, I, Toxic-inhalation hazard, Zone B''; or ''UN 3077, Environmentally hazardous substances, solid, n.o.s., 9, III, RQ (Adipic acid)''.

(d) * * *

(1) The name of each radionuclide in the Class 7 (radioactive) material that is listed in § 173.435 of this subchapter. For mixtures of radionuclides, the radionuclides required to be shown must be determined in accordance with § 173.433(g) of this subchapter. Abbreviations, *e.g.*, ''^{99}Mo,'' are authorized.

* * * * *

(i) * * *

(2) Minimum flash point if 60 °C (140 °F) or below (in °C closed cup (c.c.)) in association with the basic description.

* * * * *

(k) * * * A material classed as Division 6.2 and assigned identification number UN 2814 or UN 2900 that is suspected to contain an unknown Category A infectious substance must have the words ''suspected Category A infectious substance'' entered in parentheses in place of the technical name as part of the proper shipping description. For additional technical name options, see the definition for ''Technical name'' in § 171.8. A technical name should not be marked on the outer package of a Division 6.2 material (see § 172.301(b)).

* * * * *

■ 12. In § 172.320, paragraph (b) is revised, paragraph (e)(4) is removed, and paragraph (e)(5) is redesignated as (e)(4) to read as follows:

§ 172.320 Explosive hazardous materials.

* * * * *

(b) Except for fireworks approved in accordance with § 173.56(j) of this subchapter, a package of Class 1 materials may be marked, in lieu of the EX-number required by paragraph (a) of this section, with a national stock number issued by the Department of Defense or identifying information, such as a product code required by regulations for commercial explosives specified in 27 CFR part 555, if the national stock number or identifying information can be specifically associated with the EX-number assigned.

* * * * *

■ 13. In § 172.704, paragraph (a)(2)(ii) is revised to read as follows:

§ 172.704 Training requirements.

(a) * * *

(2) * * *

(ii) As an alternative to function-specific training on the requirements of this subchapter, training relating to the requirements of the ICAO Technical Instructions and the IMDG Code may be provided to the extent such training addresses functions authorized by subpart C of part 171 of this subchapter.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 14. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 15. In § 173.21, paragraph (f)(3) introductory text is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) Refrigeration may be used as a means of stabilization only when approved by the Associate Administrator. Approvals issued by the Bureau of Explosives are no longer valid (see § 171.19 of this subchapter). Methods of stabilization approved by the Associate Administrator are as follows: * * *

* * * * *

■ 16. In § 173.25, paragraph (a)(4) is revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(4) The overpack is marked with the word ''OVERPACK'' when specification packagings are required, unless specification markings on the inside packages are visible.

* * * * *

■ 17. In § 173.27, the headings of paragraphs (b), (c), (d), (e), (f) and (g) are revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(b) *Packages authorized onboard aircraft.* * * *

(c) *Pressure requirements.* * * *

(d) *Closures.* * * *

(e) *Absorbent materials.* * * *

(f) *Combination packagings.* * * *

(g) *Cylinders.* * * *

* * * * *

■ 18. In § 173.219, paragraph (a) is revised to read as follows:

§ 173.219 Life-saving appliances.

(a) A life-saving appliance, self-inflating or non-self-inflating, containing small quantities of hazardous materials that are required as part of the life-saving appliance must conform to the requirements of this section. Packagings must conform to the general packaging requirements of subpart B of this part but need not conform to the requirements of part 178 of this subchapter. The appliances must be packed, so that they cannot be accidentally activated and, except for life vests, the hazardous materials must be in inner packagings packed so as to prevent shifting within the outer packaging. The hazardous materials must be an integral part of the appliance and in quantities that do not exceed those appropriate for the actual appliance when in use.

* * * * *

■ 19. In § 173.227, the heading and the first sentence in paragraph (b) introductory text is revised to read as follows:

§ 173.227 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone B.

* * * * *

(b) 1A1, 1B1, 1H1, 1N1, 6HA1, or 6HH1 drums further packed in a 1A2 or 1H2 drum. Both the inner and outer drums must conform to the performance test requirements of subpart M of part 178 of this subchapter at the Packing Group I performance level. * * *

* * * * *

■ 20. In § 173.308, paragraph (b)(3)(ii) is revised to read as follows:

§ 173.308 Lighters.

* * * * *

(b) * * *

(3) * * *

(ii) After weighing, place the lighters together in an explosion-proof, controlled-temperature laboratory oven capable of maintaining 38 ± 1°C (100 ± 2°F) for 96 continuous hours (4 days). At the end of 96 hours, remove the lighters from the oven and place them in the same desiccator and allow the lighters to cool to ambient temperature.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 21. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 22. In § 175.30, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 175.30 Inspecting shipments.

(a) * * *

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by subpart C of part 171 of this subchapter. See § 175.33 for shipping paper retention requirements;

(3) Marked and labeled in accordance with subparts D and E of part 172 or as authorized by subpart C of part 171 of this subchapter, and placarded (when required) in accordance with subpart F of part 172 of this subchapter; and

* * * * *

■ 23. In § 175.33, paragraph (a)(6) is revised to read as follows:

§ 175.33 Shipping paper and notification of pilot-in-command.

(a) * * *

(6) For Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their category, transport index (if applicable), and their location aboard the aircraft;

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 24. The authority citation for part 176 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 25. In § 176.2, the definitions for ''Explosive article'' and ''INF cargo'' are revised to read as follows:

§ 176.2 Definitions.

* * * * *

Explosive article means an article or device that contains one or more explosive substances. Individual explosive substances are identified in column 17 of the Dangerous Goods List in the IMDG Code (IBR, see § 171.7 of this subchapter).

* * * * *

INF cargo means packaged irradiated nuclear fuel, plutonium or high-level radioactive wastes as those terms are defined in the ''International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships'' (INF Code) contained in the IMDG Code.

* * * * *

■ 26. In § 176.83, paragraph (b) introductory text is revised to read as follows:

§ 176.83 Segregation.

* * * * *

(b) *General Segregation Table.* The following table sets forth the general requirements for segregation between the various classes (divisions) of hazardous materials. Certain divisions are listed as separate hazard classes for the purpose of this table (*e.g.*, ''2.1'' and ''2.2''). The properties of materials within each class may vary greatly and may require greater segregation than is reflected in this table. If the § 172.101 Table sets forth particular requirements for segregation, they take precedence over these general requirements.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 27. The authority citation for part 178 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 28. In § 178.36, paragraph (a)(2) introductory text and the first sentence in paragraph (f) are revised to read as follows:

§ 178.36 Specification 3A and 3AX seamless steel cylinders.

(a) * * *

(2) A DOT–3AX is a seamless steel cylinder with a water capacity not less than 1,000 pounds and a service pressure of at least 500 psig, conforming to the following requirements:

* * *

* * * * *

(f) *Wall thickness.* For cylinders with service pressure less than 900 psig, the wall stress may not exceed 24,000 psig. * * *

* * * * *

■ 29. In § 178.275, paragraph (d)(3) introductory text and paragraph (i)(2) are revised to read as follows:

§ 178.275 Specification for UN portable tanks intended for the transportation of liquid and solid hazardous materials.

* * * * *

(d) * * *

(3) Except as provided in paragraph (d)(2) of this section, every bottom discharge outlet must be equipped with three serially fitted and mutually independent shut-off devices. The design of the equipment must include:

* * *

* * * * *

(i) * * *

(2) The combined delivery capacity of the pressure relief system (taking into account the reduction of the flow when the portable tank is fitted with frangible-discs preceding spring-loaded pressure-relief devices or when the spring-loaded pressure-relief devices are provided with a device to prevent the passage of the flame), in condition of complete fire engulfment of the portable tank must be sufficient to limit the pressure in the shell to 20% above the start to discharge pressure limiting device (pressure relief device). The total required capacity of the relief devices may be determined using the formula in paragraph (i)(2)(i)(A) of this section or the table in paragraph (i)(2)(iii) of this section.

(i)(A) To determine the total required capacity of the relief devices, which must be regarded as being the sum of the individual capacities of all the contributing devices, the following formula must be used:

$$Q = 12.4\,\frac{FA^{0.82}}{LC}\sqrt{\frac{ZT}{M}}$$

Where:

Q = minimum required rate of discharge in cubic meters of air per second ($m^3/_s$) at conditions: 1 bar and 0 °C (273 °K);

F = for uninsulated shells: 1; for insulated shells: U(649 − t)/13.6 but in no case is less than 0.25

Where:

U = thermal conductance of the insulation, in $kW\,m^{-2}K^{-1}$, at 38 °C (100 °F); and t = actual temperature of the hazardous material during filling (in °C) or when this temperature is unknown, let t = 15 °C (59 °F). The value of F given in this paragraph (i)(2)(i)(A) for insulated shells may only be used if the insulation is in conformance with paragraph (i)(2)(iv) of this section;

A = total external surface area of shell in square meters;

Z = the gas compressibility factor in the accumulating condition (when this factor is unknown, let Z equal 1.0);

T = absolute temperature in Kelvin (°C + 273) above the pressure relief devices in the accumulating condition;

L = the latent heat of vaporization of the liquid, in kJ/kg, in the accumulating condition;

M = molecular weight of the hazardous material.

(B) The constant C, as shown in the formula in paragraph (i)(2)(i)(A) of this section, is derived from one of the following formulas as a function of the ratio k of specific heats:

$$k = \frac{c_p}{c_v}$$

Where:

c_p is the specific heat at constant pressure; and

c_v is the specific heat at constant volume.

(C) When k >1:

$$C = \sqrt{k\left(\frac{2}{k+1}\right)^{\frac{k+1}{k-1}}}$$

(D) When k = 1 or k is unknown, a value of 0.607 may be used for the constant C. C may also be taken from the following table:

C CONSTANT VALUE TABLE

k	C
1.00	0.607
1.02	0.611
1.04	0.615
1.06	0.620
1.08	0.624
1.10	0.628
1.12	0.633
1.14	0.637
1.16	0.641
1.18	0.645
1.20	0.649
1.22	0.652
1.24	0.656
1.26	0.660
1.28	0.664
1.30	0.667
1.32	0.671
1.34	0.674
1.36	0.678
1.38	0.681
1.40	0.685
1.42	0.688
1.44	0.691
1.46	0.695
1.48	0.698
1.50	0.701
1.52	0.704
1.54	0.707
1.56	0.710
1.58	0.713
1.60	0.716
1.62	0.719
1.64	0.722
1.66	0.725
1.68	0.728
1.70	0.731
2.00	0.770
2.20	0.793

(ii) As an alternative to the formula in paragraph (i)(2)(i)(A) of this section, relief devices for shells used for transporting liquids may be sized in accordance with the table in paragraph (i)(2)(iii) of this section. The table in paragraph (i)(2)(iii) of this section assumes an insulation value of F = 1 and must be adjusted accordingly when the shell is insulated. Other values used in determining the table in paragraph (i)(2)(iii) of this section are: L = 334.94 kJ/kg; M = 86.7; T = 394 °K; Z = 1; and C = 0.607.

(iii) Minimum emergency vent capacity, Q, in cubic meters of air per second at 1 bar and 0 °C (273 °K) shown in the following table:

MINIMUM EMERGENCY VENT CAPACITY

[Q Values]

A Exposed area (square meters)	Q (Cubic meters of air per second)	A Exposed area (square meters)	Q (Cubic meters of air per second)
2	0.230	37.5	2.539
3	0.320	40	2.677
4	0.405	42.5	2.814
5	0.487	45	2.949
6	0.565	47.5	3.082
7	0.641	50	3.215
8	0.715	52.5	3.346
9	0.788	55	3.476
10	0.859	57.5	3.605
12	0.998	60	3.733
14	1.132	62.5	3.860
16	1.263	65	3.987
18	1.391	67.5	4.112
20	1.517	70	4.236
22.5	1.670	75	4.483
25	1.821	80	4.726
27.5	1.969	85	4.967
30	2.115	90	5.206
32.5	2.258	95	5.442
35	2.400	100	5.676

(iv) Insulation systems, used for the purpose of reducing venting capacity, must be specifically approved by the approval agency. In all cases, insulation systems approved for this purpose must—

(A) Remain effective at all temperatures up to 649 °C (1200 °F); and

(B) Be jacketed with a material having a melting point of 700 °C (1292 °F) or greater.

* * * * *

■ 30. In § 178.605, paragraph (d) introductory text, and paragraph (d)(3) are revised to read as follows:

§ 178.605 Hydrostatic pressure test.

* * * * *

(d) *Test method and pressure to be applied.* Metal packagings and composite packagings other than plastic (*e.g.*, glass, porcelain or stoneware), including their closures, must be subjected to the test pressure for 5 minutes. Plastic packagings and

composite packagings (plastic material), including their closures, must be subjected to the test pressure for 30 minutes. This pressure is the one to be marked as required in § 178.503(a)(5). The receptacles must be supported in a manner that does not invalidate the test. The test pressure must be applied continuously and evenly, and it must be kept constant throughout the test period. In addition, packagings intended to contain hazardous materials of Packing Group I must be tested to a minimum test pressure of 250 kPa (36 psig). The hydraulic pressure (gauge) applied, taken at the top of the receptacle, and determined by any one of the following methods must be:

* * * * *

(3) Not less than 1.5 times the vapor pressure at 55 °C (131 °F) of the material to be transported minus 100 kPa (15 psi), but with a minimum test pressure of 100 kPa (15 psig).

* * * * *

■ 31. In § 178.700, paragraph (c)(1) is revised to read as follows:

§ 178.700 Purpose, scope and definitions.

(c) * * *

(1) *Body* means the receptacle proper (including openings and their closures, but not including service equipment), that has a volumetric capacity of not more than three cubic meters (3,000 L, 793 gallons, or 106 cubic feet) and not less than 0.45 cubic meters (450 L, 119 gallons, or 15.9 cubic feet) or a maximum net mass of not less than 400 kg (882 pounds).

* * * * *

■ 32. In § 178.801, paragraph (c)(1) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(c) * * *

(1) *IBC design type* refers to an IBC that does not differ in structural design, size, material of construction, wall thickness, manner of construction and representative service equipment.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 33. The authority citation for part 179 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR part 1.53.

■ 34. In § 179.400–18, paragraph (a) is revised to read as follows:

§ 179.400–18 Test of inner tank.

(a) After all items to be welded to the inner tank have been welded in place, the inner tank must be pressure tested at the test pressure prescribed in § 179.401–1. The temperature of the pressurizing medium may not exceed 38 °C (100 °F) during the test. The inner tank must hold the prescribed pressure for a period of not less than ten minutes without leakage or distortion. In a pneumatic test, due regard for the protection of all personnel should be taken because of the potential hazard involved. After a hydrostatic test the container and piping must be emptied of all water and purged of all water vapor.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 35. The authority citation for part 180 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 36. In § 180.209, paragraphs (l) introductory text and (l)(2) are revised to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(l) *Requalification of foreign cylinders filled for export.* A cylinder manufactured outside the United States, other than as provided in §§ 171.12(a) and 171.23(a) of this subchapter, that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be filled with compressed gas in the United States, and shipped solely for export if it meets the following requirements, in addition to other requirements of this subchapter:

(1) * * *

(2) It is offered for transportation in conformance with the requirements of § 171.12(a)(4) or § 171.23(a)(4) of this subchapter.

* * * * *

Issued in Washington, DC, on September 23, 2008, under authority delegated in 49 CFR part 1.

Carl T. Johnson,

Administrator.

[FR Doc. E8–22743 Filed 9–30–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

CFR Correction

In title 49 of the Code of Federal Regulations, part 172, revised as of October 1, 2007, beginning on page 132, in § 172.101 the following corrections are made to the Hazardous Materials Table:

1. The first entry for Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable corrosive, n.o.s. UN2733 is removed.

2. The entry for Amines, liquid, corrosive, flammable n.o.s. *or* Polyamines, liquid corrosive, flammable n.o.s. UN2734 PG I is reinstated above the second PG II entry in UN2733.

3. The entry for Calcium UN1401 is reinstated.

4. In Caustic alkali liquids, n.o.s. UN1719, ‘‘, 52’’ is added to both entries after the number ‘‘29’’.

5. The entry for Chromosulfuric acid UN2240 is reinstated.

6. The second entry for Lighters containing flammable gas UN1057 is removed.

7. In the entry for Methylhydrazine UN1244, ‘‘49, 52 and 100’’ are added in the last column.

8. The entry for Organometallic substance solid, water reactive UN3395 is reinstated.

The reinstated text reads as follows:

§ 172.101 Special provisions.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	PG	Label Codes	Special provisions (§ 172.102)	(8) Packaging			(9) Quantity limitations		(10)	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*			*		*			*		
.....	Amines, liquid, corrosive, flammable n.o.s. *or* Polyamines, liquid corrosive, flammable n.o.s.	8	UN2734	I	8,3	A3, A6, N34, T14, TP2, TP27	None	201	243	0.5L	2.5L	A	52
	*		*			*		*			*		
.....	Calcium	4.3	UN1401	II	4.3	IB7, IP2, T3, TP33	151	212	241	15 kg	50kg	E	52
	*		*			*		*			*		
.....	Chromosulfuric acid	8	UN2240	I	8	A3, A6, A7, B4, B6, N34, T10	None	201	243	0.5L	2.5L	B	40, 66, 74, 89, 90
	*		*			*		*			*		
.....	Organometallic substance, solid, water-reactive.	4.3	UN3395	I	4.3	N40, T9, TP7, TP33	None	211	242	Forbidden	Forbidden	E	40, 52
	*		*			*		*			*		

[FR Doc. E8–23119 Filed 9–30–08; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0809241260–81267–01]

RIN 0648–XK78

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters offshore of Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles. This action is necessary because environmental conditions resulting from Hurricanes Gustav and Ike are preventing some fishermen from using TEDs effectively.

DATES: Effective from September 26, 2008 through October 27, 2008.

ADDRESSES: Requests for copies of the Environmental Assessment on this action should be addressed to the Assistant Regional Administrator, Protected Resources Division, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–551–5794.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to allow sea turtles to escape. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, which allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 5 and 15, 2008, the NMFS Southeast Regional Administrator received requests from the Louisiana Department of Wildlife and Fisheries (LDWF) and the Mississippi Department of Marine Resources (MDMR), respectively, to allow the use of tow times as an alternative to turtle excluder devices (TEDs) in state and Federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricanes Gustav and Ike. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and the states' resource agency staffs confirm there are problems with debris in state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles, which are likely to affect the effectiveness of TEDs; discussions between NMFS Southeast Region's Protected Resources staff, fishermen, and the states' resource agency staffs, and a survey of Mississippi waters found no significant remaining issues stemming from storm-related debris on the shrimp fishing grounds. Louisiana has stated that their marine enforcement agents will enforce the tow time restrictions.

Special Environmental Conditions

The AA finds that debris washed into hurricane-affected state and Federal waters off of Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary), extending offshore 20 nautical miles, has created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in state and Federal waters off of Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles, for a period of 30 days. Tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the

water until they are retrieved from the water.

A survey of Mississippi waters found no significant remaining issues stemming from storm-related debris in the shrimp fishery. Therefore, the MDMR request for an exemption was not granted.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45 , relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this temporary rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in hurricane-affected state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary), extending offshore 20 nautical miles, for a period of 30 days. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on October 27, 2008, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an environmental situation to allow more efficient fishing for shrimp, while providing effective protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this temporary rule. The AA finds that unusually high amounts of post-hurricane debris are creating special environmental conditions that make trawling with TED-equipped nets impractical. Prior notice and the opportunity to receive public comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry timely relief from the effects of Hurricanes Gustav and Ike, while providing effective protection for sea turtles.

Many shrimp fishermen in Louisiana may be unable to operate under the special environmental conditions created by Hurricanes Gustav and Ike without an alternative to the use of TEDs. Therefore, The AA finds that there is good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. For the reasons above, the AA finds that this temporary rule should not be subject to a 30–day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: September 26, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8–23117 Filed 9–26–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK79

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by

the inshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 26, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2008 Pacific cod sideboard limit established for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 980 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 680.22(e)(2)(i), the Regional Administrator has determined that the 2008 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 970 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2008.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: September 25, 2008.

Emily H. Menashes,

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

[FR Doc. E8–23113 Filed 10–1–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 191
Wednesday, October 1, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 742

RIN 3133–AD53

Regulatory Flexibility Regarding Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its Regulatory Flexibility (RegFlex) Program to provide additional flexibility to qualifying federal credit unions (FCUs) when acquiring unimproved land for future expansion. Currently, when an FCU acquires unimproved land for future expansion and does not fully occupy the completed premises within one year, it must partially occupy the completed premises within three years or obtain a waiver. The proposed amendment would increase the three years to six years for RegFlex FCUs without a waiver. NCUA also proposes to make conforming amendments to its fixed asset rule to be consistent with the RegFlex changes.

DATES: Comments must be received on or before December 1, 2008.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule 742, Regulatory Flexibility Program'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

1. Fixed Assets

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, the fixed asset rule provides limits on fixed asset investments, establishes occupancy and other requirements for acquired and abandoned premises, and prohibits certain transactions. 12 CFR 701.36. Fixed assets are defined in § 701.36(e) as premises, furniture, fixtures, and equipment and includes any office, branch office, suboffice, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

Section 701.36 prohibits an FCU with $1 million or more in assets from investing in fixed assets the aggregate of which exceeds five percent of the FCU's shares and retained earnings, although this prohibition is waivable. 12 CFR 701.36(a)(1), (2). If an FCU acquires premises, as broadly defined in § 701.36(e), for future expansion and does not fully occupy the space within one year, its board must have a resolution in place by the end of that year with plans for full occupation and make those plans available to NCUA upon request. 12 CFR 701.36(b)(1). Additionally, the FCU must partially occupy the premises within a reasonable period, not to exceed three years, without a waiver. 12 CFR 701.36(b)(2). In this proposal, NCUA is only addressing the circumstance where an FCU is acquiring unimproved land but no other kind of premises.

2. Regulatory Flexibility Program

The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those FCUs that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. 12 CFR 742.1. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 CFR 742.2. Also, an FCU's RegFlex authority can be lost or revoked. 12 CFR 742.3.

B. Discussion

Although a RegFlex eligible FCU is exempt from the five percent aggregate limit on fixed asset investments, it is not exempt from the requirement to partially occupy premises acquired for future expansion within three years or request a waiver of this requirement. 12 CFR 701.36(a), 701.36(b)(2), 701.36(d), 742.4(a)(3). Where an FCU is acquiring unimproved land, the partial occupancy requirement is more difficult to satisfy than if the FCU were purchasing premises with an existing branch building. The Board is aware that some FCUs take the position that the fixed asset rule's three-year partial occupancy requirement, even with a waiver option, is burdensome and an unnecessary level of oversight for RegFlex FCUs that have demonstrated sustained superior performance.

Although the NCUA Board believes additional regulatory relief can and should be granted, the time limit for an FCU to fulfill the partial occupancy requirement cannot be unlimited. That would be the equivalent of an FCU making an impermissible real estate investment and also could cause serious safety and soundness concerns. NCUA recognizes, however, that many real estate transactions are complex, time consuming, and can involve a host of wide ranging issues that must be worked through before an FCU is ready to occupy the premises. This is especially true in the unimproved land context considering the addition of

construction related issues. Accordingly, NCUA proposes to extend the three-year time period to six years for RegFlex FCUs but only with respect to the acquisition of unimproved land. NCUA believes six years is a sufficiently long time period to provide RegFlex FCUs with the flexibility they need to manage their fixed asset portfolios, in any context, free of unnecessary regulation and consistent with safe and sound credit union operations. All other substantive aspects of the fixed asset rule remain unchanged, including an FCU's ability to request a waiver of the partial occupancy requirement.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This rule provides additional flexibility and reduces regulatory burden. Accordingly, this proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 742

Credit unions, reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 25, 2008.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA proposes to amend 12 CFR parts 701 and 742 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.36(d) introductory text is amended by adding a new second sentence to read as follows:

§ 701.36 FCU Ownership of fixed assets.

* * * * *

(d) * * * Those federal credit unions are also exempt from the three-year partial occupancy requirement described in paragraph (b) of this section when acquiring unimproved land for future expansion pursuant to the terms of section 742.4(a)(3) of this chapter. * * *

* * * * *

PART 742—REGULATORY FLEXIBILITY PROGRAM

3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756, 1766.

4. Section 742.4(a)(3) is amended by adding two sentences at the end to read as follows:

§ 742.4 RegFlex Relief.

(a) * * *

(3) * * * Section 701.36(b)(2) of this chapter concerning the three-year partial occupancy requirement when acquiring unimproved land for future expansion; RegFlex credit unions are instead subject to a six-year partial occupancy requirement when acquiring unimproved land but remain subject to all other provisions of that section including the waiver provision;

* * * * *

[FR Doc. E8–23039 Filed 9–30–08; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127, and 134

The Women-Owned Small Business Federal Contract Assistance Procedures

AGENCY: Small Business Administration.

ACTION: Proposed rule; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on a data issue involving the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures authorized under Section 8(m) of the Small Business Act. Specifically, SBA is seeking comments on two data sets: the Central Contractor Registration (CCR) data set which was used in the RAND report and the proposed rule for the WOSB Federal Contract Assistance Procedures to determine the representation of WOSBs in Federal procurement in the various industries and a non-public Survey of Business Owners (SBO) data set from the Economic Census, which was not previously used in the RAND report or the proposed rule to determine the representation of WOSBs in Federal procurement in the various industries. This request for comments is intended to stimulate dialogue on available data sets and the comments will be evaluated to determine which data set will provide the soundest basis to identify industries in which WOSBs are underrepresented in Federal procurement.

DATES: The SBA must receive comments on or before October 31, 2008.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail, Hand Delivery/Courier:* Linda Korbol, Assistant Administrator for Women's Procurement, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

All comments will be posted on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the comments to Linda Korbol and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published.

FOR FURTHER INFORMATION CONTACT: Linda Korbol, Assistant Administrator for Women's Procurement, Office of Government Contracting, (202) 205–7341.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2007, the U.S. Small Business Administration (SBA or Agency) issued a proposed rule, in the **Federal Register** (72 FR 73285), that would implement procedures to increase procurement opportunities for Women-Owned Small Businesses (WOSBs), as authorized under Section 8(m) of the Small Business Act (Act). Today, the SBA has published the Final Rule setting forth these procedures. According to the Final Rule, however, the SBA must designate the industries to be included in the WOSB Procedures by publishing a Notice in the **Federal Register** and posting a list of the designated industries on its Internet Web site. The SBA has determined that additional comment is needed in order to ensure that the most accurate available data is utilized to determine underrepresentation by WOSBs in Federal procurement and designate the industries that will be included in the WOSB Procedures.

Section 8(m) of the Act (15 U.S.C. 637(m)) authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in certain industries. The Final Rule authorizes set-asides for industries in which WOSBs are determined to be underrepresented or substantially underrepresented in Federal procurement when the procuring agency has determined that the set-aside would satisfy constitutional requirements. Section 8(m) of the Act required SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA with any information that SBA deems necessary to conduct the study. SBA initially completed the required study in September 2001. However, in March 2005, the National Academy of Sciences (NAS) issued an independent evaluation determining that SBA's original study was ''fatally flawed.'' In response to the NAS's findings, SBA issued a solicitation in October 2005 seeking a contractor to perform a revised study in accordance with the NAS report. In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a revised study of the availability and utilization of WOSBs in prime contracts. The RAND report was published in April 2007 and is available to the public at *http://www.rand.org/pubs/technical_reports/TR442/*.

As the study explains, WOSB representation in the industries is generally described by a ''disparity ratio,'' which is a measure comparing the utilization of WOSBs to their availability in Federal contracting. Utilization is measured by comparing the presence of WOSBs in Federal contracting to an overall measure of Federal contracting. Availability is measured by comparing the presence of WOSBs among firms available for Federal contracting to an overall measure of available firms.

In the study, RAND computed disparity ratios in twenty-eight different ways (for further information about these approaches see 72 FR 73285, Dec. 27, 2007). All of these approaches used procurement data from the Federal Procurement Data System—Next Generation (FPDS/NG) to compute the utilization component of the disparity ratio. FPDS/NG, which is publicly available at *http://www.fpds.gov*, is a Federal government database that provides information about the overall Federal acquisition process and the contracts awarded by the many Federal agencies. FPDS/NG contains information on individual contract actions on prime contracts valued above a certain dollar amount. In the proposed rule, SBA determined the best measure of underrepresentation was using a disparity ratio that measures utilization by computing the contract dollars awarded to WOSBs relative to the total contract dollars awarded.[1] That determination was the subject of comments on the proposed rule, and additional comment is not sought in this notice.

For the availability component of the disparity ratio, in twenty of the twenty-eight calculations, RAND utilized the Central Contractor Registration (CCR) database to measure availability (gross receipts for WOSBs relative to gross receipts for all firms) and to define a group of firms that are ready, willing, and able to compete for Federal contracts. CCR is the primary registrant database for the Federal government. Thus, both current and potential Federal government registrants are required to register in CCR, which can be found at *http://www.ccr.gov*, in order to be awarded contracts by the Federal agencies. Vendors reporting in CCR must provide information concerning its type of business, relevant North American Industry Classification System (NAICS) codes in which it does business, business address, annual employment, three year average annual business revenue and socio-economic status.

For the remaining eight of the twenty-eight calculations of the availability component of the disparity ratio, RAND utilized data from the publicly available 2002 Survey of Business Owners (SBO) from the five-year Economic Census. The public-use Economic Census data includes aggregate information about business owners' demographic characteristics, type of business, and gross receipts. In the proposed rule, the SBA rejected the disparity measures based on SBO data for three reasons: (1) Publicly-available SBO data does not distinguish between WOSBs and women-owned businesses of all sizes, (2) SBO data is gathered every five years and is generally not available for two years after the survey, which impacts its timeliness, and (3) the publicly available SBO cannot identify industry grouping in more detail than the two-digit NAICS level (the NAS recommended using the most detailed measure possible, specifying either 3- or 4-digit NAICS codes). Finally, the SBO

[1] The statutory procurement goal for small business concerns owned and controlled by women states that: ''The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.'' 15 U.S.C. 644(a). Congress authorized the contracting assistance procedures in Section 8(m) as a result of the Federal Government's persistent deficiencies in achieving this goal. Thus, the disparity measure based on contract dollars is consistent with the five percent goal, which is also based on contract dollars.

data provide a broader perspective on availability. Because the SBO data set generally considers all firms in the economy, it may overestimate the amount of firms that are clearly ''ready, willing, and able'' to perform Federal contracts. CCR and SBO were the only data sources identified in the NAS report and the RAND study with respect to the availability component of the disparity ratio.

As noted above, RAND measured utilization to availability to determine a disparity ratio, where utilization is the contract dollars awarded to WOSBs divided by the contract dollars awarded to all firms in a specific industry, and availability is the revenue of WOSBs divided by the revenue of all firms in that industry. Using the FY05 FPDS/NG data for the utilization component and the October 2006 CCR data for the availability component, RAND identified four industries where WOSBs are underrepresented or substantially underrepresented: NAICS codes 9281—National Security and International Affairs, 3328—Coating, Engraving, Heat Treating, and Allied Activities, 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing, and 4412—Other Motor Vehicle Dealers. These were the eligible industries identified in the proposed rule.

During its review of comments on the proposed rule, SBA reviewed again the CCR data utilized by RAND in its study. Specifically, SBA reviewed the CCR data. As noted above, vendors input information into CCR relating to the firm's revenues and NAICS codes, which are a method for classifying business establishments. Vendors must supply at least one NAICS code for registration into CCR to be complete, but can supply more than one. Vendors do not input the business's revenues for each NAICS code listed, or for each NAICS code in which it does business; rather, vendors input total revenues for the firm. Thus, CCR does not provide information concerning the revenue of a firm in each of the NAICS codes, or industries, it sets forth in its CCR registration.

When RAND computed the disparity ratio, however, the total revenues set forth by WOSBs in CCR were used to calculate the total receipts of WOSBs in each NAICS code listed in the CCR profile. Likewise, the revenues set forth by all firms in CCR were used to calculate the total revenue of all firms in each NAICS code listed in CCR. For a firm reporting more than one NAICS code, the reported revenue was counted in full for each NAICS code reported by the firm in the CCR. This has resulted in firms' total revenue being counted for multiple NAICS codes, overstating the aggregate revenue figures. However, because the disparity ratio defined availability of WOSBs in Federal contracting by measuring the revenue of WOSBs divided by the revenue of all firms in that industry using this CCR data, and because both the WOSB and total revenue figures in a given industry may or may not be equally impacted by this limitation in the CCR data, SBA currently has no evidence whether or not the revenue overstatement affects the availability and disparity ratios in any specific industry.

Although the CCR dataset was publicly available along with the RAND report at *http://www.rand.org/pubs/technical_reports/TR442/* during the public comment period on the proposed rule, this CCR dataset limitation was not specifically discussed in the RAND study and SBA did not receive public comments on this issue during the public comment period for the proposed rule.

After this issue was discovered, SBA contacted the Census Bureau to determine the availability of an alternative data set that did not include the revenue overstatements identified in CCR. The Census Bureau provided SBA with a non-public data set for the availability component of the disparity ratio. The data consists of non-public data from the 2002 Survey of Business Owners collected through the 5-year Economic Census for firms with employees. Although this data set was not used in the RAND report results, it was mentioned in the RAND report as restricted data which would be available to the SBA at a more disaggregated NAICS code level than the public data. This non-public SBO data set does distinguish between WOSBs, as defined by the final rule, and women-owned businesses of all sizes. In addition, the data set is disaggregated to the 4-digit NAICS code level. However, the new SBO data is not without its own limitation. The Census Bureau collected the non-public SBO data on an establishment basis, such that each firm's location is a separate establishment for data collection purposes. Each establishment is assigned to a single 6-digit NAICS code, and establishments with more than one NAICS code are classified into their principal NAICS code. Therefore, for establishments that reported revenue in multiple sectors, this could result in an overstatement of the revenue in some NAICS code industries and an understatement in others. SBA currently has no evidence whether or not the revenue overstatement or understatement affects the availability and disparity ratios in any specific industry. As noted earlier, these data also have the limitation that they are from 2002. However, changes to the underlying economy occur relatively gradually, so it is possible to conclude that this data provides an adequate picture of the ownership and relative sizes of firms over the next few years. Also, as noted earlier, the SBO data provide a very broad perspective on availability. SBA limited the analysis to firms with employees to improve the reliability of the estimate of firms that would be genuinely ready, willing and able to perform Federal contracts. However, the availability of both WOSBs and all firms in a sector to perform Federal contracts may still be overstated by these data.

Using the non-public SBO data for the availability component of the disparity ratio and the FY05 FPDS/NG data from RAND study results for the utilization component, thirty-one of the 140 NAICS codes analyzed in the RAND study were identified as underrepresented or substantially underrepresented: 2361—Residential Building Construction, 3149—Other Textile Product Mills, 3152—Cut and Sew Apparel Manufacturing, 3231—Printing and Related Support Activities, 3259—Other Chemical Product and Preparation Manufacturing, 3323—Architectural and Structural Metals Manufacturing, 3324—Boiler, Tank and Shipping Container Manufacturing, 3328—Coating, Engraving, Heat Treating, and Allied Activities, 3369—Other Transportation Equipment Manufacturing, 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing, 4412—Other Motor Vehicle Dealers, 4461—Health and Personal Care Stores; 4543—Direct Selling Establishments, 4841—General Freight Trucking, 4931—Warehousing and Storage, 5179—Other Telecommunications, 5312—Offices of Real Estate Agents and Brokers, 5413—Architectural, Engineering, and Related Services; 5414—Specialized Design Services, 5417—Scientific Research and Development Services, 5419—Other Professional, Scientific, and Technical Services, 5614—Business Support Services, 5615—Travel Arrangement and Reservation Services, 5619—Other Support Services; 5622—Waste Treatment and Disposal, 5629—Remediation and Other Waste Management Services, 6114—Business Schools and Computer and Management Training, 6115—Technical and Trade Schools, 6116—Other Schools and Instruction; 6214—Outpatient Care Centers, 8112—Electronic and Precision

Equipment Repair and Maintenance, 8129—Other Personal Services. The Census Bureau report and associated data are available at *http://www.sba.gov/tools/resourcelibrary/lawsandregulations/index.html*. In order to protect firm confidentiality, revenues at the 4-digit NAICS level are disclosed only in ranges.

Request for Comments

In light of the foregoing, input from the public is required prior to using a data set to identify the eligible industries. In providing comments, please specify which of the following issues you are addressing (e.g., ''Response to issue 1.''). Please be industry specific. Comments should be as precise as possible. SBA is specifically requesting comments addressing the following: (1) The impact, if any, the limitation in the CCR data has on the disparity ratio in specific industries; (2) the impact, if any, the limitation in the non-public SBO data has on the disparity ratio in specific industries; (3) other data that can be utilized to measure the availability of WOSBs (*i.e.*, gross receipts for WOSBs relative to gross receipts for all firms) in the various NAICS codes at the 4-digit level; (4) the availability of this other data, advantages and disadvantages of the use of such data, and the reliability of such data (responses should be as specific as possible about the improvements other data sets could offer over the CCR or SBO data, judging by the standards laid out in the RAND report and NAS study); (5) reasons, for the purpose of calculating WOSB revenue and all firms' revenue in a given industry, the limitation in the CCR data may outweigh the limitation in the non-public SBO data that is described in this Notice; and (6) whether, for the availability component of the disparity ratio, SBA should use the CCR data from the RAND report, the public SBO data from the RAND report, the non-public SBO data described in this Notice, or some other specified data set.

Authority: 15 U.S.C. 637(m).

Dated: September 26, 2008.

Calvin Jenkins,

Deputy Associate Administrator for Government Contracting and Business Development.

[FR Doc. E8–23139 Filed 9–26–08; 4:15 pm]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

[Docket No. USA–2008–0012]

RIN 0702–AA60

Army National Cemeteries

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; availability of supplemental information; request for comments.

SUMMARY: The Department of the Army proposes to revise its regulation concerning Arlington National Cemetery. Army Regulation 290–5 states the authority and assigns the responsibilities for the development, operation, maintenance, and administration of the Arlington and the U.S. Soldiers' and Airmen's Home National Cemeteries. These cemeteries are under the jurisdiction of the Department of the Army and are civil works activities. The regulation further prescribes policies and procedures on eligibility for interment, inurnment, and memorialization; disinterments and disinurnments; transinterments and transinurnments; the Arlington Memorial Amphitheater; solicitations; headstones, niche covers and memorial markers; memorial and commemorative monuments, tributes to commemorate individuals, events, units, groups, and/or organizations; and visitors, media and videographer rules.

DATES: Consideration will be given to all comments received by December 1, 2008.

ADDRESSES: You may submit comments, identified by 32 CFR Part 553, Docket No. USA–2008–0012 and or by RIN 0702-AA60 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. John Metzler, Jr., (703) 607–8545.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule makes numerous administrative changes throughout the document to reflect the changes to the forthcoming update to Army Regulation 290–5. The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this part fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

Environmental analysis of this regulation under the National Environmental Policy Act is not required as this regulation reflects ongoing activities and changes made to the regulation and does not constitute a new use of the property.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12530 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

It has been determined that the changes to 32 CFR Part 553 are not considered a ''significant regulatory action.'' The rule does not:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial 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.

Dated: September 24, 2008.

John C. Metzler, Jr.,

Superintendent, Arlington National Cemetery.

List of Subjects in 32 CFR Part 553

Cemeteries, District of Columbia, Government property, Interments, Inurnments, Memorialization, Veterans, Visitor rules.

For reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR part 553 to read as follows:

PART 553—ARMY NATIONAL CEMETERIES

Sec.

553.1 Definitions.
553.2 Purpose.
553.3 Statutory authority.
553.4 Scope and applicability.
553.5 Responsibilities.
553.6 Federal jurisdiction.
553.7 Power of arrest.
553.8 Standards for managing Army National Cemeteries.
553.9 Arlington Memorial Amphitheater.
553.10 Accountability and procurement of property, supplies, equipment, and services.
553.11 Permission to install poles, lines, and water and sewer pipes.
553.12 Gifts.
553.13 Solicitations.
553.14 Authority for interments, inurnments, and memorial sections.
553.15 Plans for gravesites, memorial areas, and niches.
553.16 Assignment of gravesites or niches.
553.17 Proof of eligibility.
553.18 Eligibility for interment in Arlington National Cemetery.
553.19 Eligibility for group burial in Arlington National Cemetery.
553.20 Eligibility for memorialization in an Arlington National Cemetery Memorial Area.
553.21 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.
553.22 Eligibility for inurnment in Arlington National Cemetery.
553.23 Arlington National Cemetery interment/inurnment agreement.
553.24 Eligibility for burial in United States Soldiers' and Airmen's Home National Cemetery.
553.25 Persons ineligible for interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers' and Airmen's Home National Cemetery.
553.26 Prohibition of interment, inurnment, or memorialization of persons who have committed certain crimes.
553.27 Findings concerning a commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.
553.28 Exceptions to policies for interment or inurnment at Arlington National Cemetery.
553.29 Cremated remains and interment or inurnment at Arlington National Cemetery.
553.30 Subsequent remains.
553.31 Disinterments and disinurnments of remains.
553.32 Transinterments or transinurnments of remains.
553.33 Design of government headstones, niche covers, and memorial markers.
553.34 Inscriptions on government headstones, niche covers, and memorial markers.
553.35 Headstones and markers at private expense.
553.36 Permission to construct private headstones.
553.37 Inscriptions on private headstones.
553.38 Memorial and commemorative monuments (other than private headstones or markers).
553.39 Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups, and/or organizations.
553.40 Requests to conduct memorial services and ceremonies.
553.41 Conduct of memorial services and ceremonies.
553.42 Visitors rules for Arlington National Cemetery.
553.43 Soliciting and vending.
553.44 Media.
553.45 Videography.
553.46 Penalties.

Authority: 24 U.S.C., Chapter 7; 24 U.S.C. 295a; 38 U.S.C. 2409; 38 U.S.C. 2410; 10 U.S.C. 936(a)(6); 32 U.S.C.; 24 U.S.C. 412; 18 U.S.C. 1751; 38 U.S.C. 2411; 38 U.S.C.; 38 U.S.C., Chapter 24, and 18 U.S.C., Chapter 67.

§ 553.1 Definitions.

For purposes of 32 CFR Part 553 only, the following terms are defined.

Active duty. Full-time duty in the active military service of the United States.

(1) This includes active Guard and Reserve duty performed pursuant to Title 10 of the U.S. Code.

(2) This does not include full-time duty performed under Title 32 of the U.S. Code.

(3) This does not include full-time training, annual training, or inactive duty training for members of Reserve components.

(4) This does include service as a cadet currently on the rolls at the U.S. Military, Air Force or Coast Guard Academies, or as a midshipman at the U.S. Naval Academy.

Active duty for special work. A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs (active duty for special work—Active component funded or active duty for special work—Reserve component funded). The purpose of active duty for special work is to provide the necessary skilled manpower assets to support existing or emerging requirements. Training may occur in the conduct of active duty for special work. Authorization of active duty for special work must be managed in accordance with Directives established by the Secretary concerned.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, or educational courses to Reserve component members. Included in the active duty for training category are annual training, initial active duty training and other training duty. Active duty for training may support Active component missions and requirements; e.g., operational support.

Armed Forces. The United States Army, Navy, Air Force, Marine Corps, Coast Guard, and their Reserve Components. Reserve Components of the Armed Forces are: the Army

National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard, the Air Force Reserve, and the Coast Guard Reserve.

Close relative. Includes the spouse, parents, adult brothers and sisters, and adult natural children, adult stepchildren, and adult adopted children of a decedent.

Commemorative monuments. Monuments that are dedicated to events in history, individuals or units of the armed forces that do not contain remains or that mark the location of remains in close proximity.

Disinterment. The removal of remains from a gravesite.

Decedent's representative. The person authorized to direct disposition of human remains or other authorized family representative with legal disposition authority in accordance with the laws of the State (or territory, possession, or country) of the decedent's legal residence.

Disinurnment. The removal of cremated remains from a niche.

Federal capital crime. An offense under Federal law for which a life sentence or the death penalty may be imposed.

Former prisoner of war. A person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty by an enemy government or its agents, or a hostile force, during a period of war; or by a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

Gravesite. An excavation made in the earth to receive a dead body or cremated remains in burial.

Group burial. When one or more eligible service member(s) on active duty are killed in the same incident or location and their remains cannot be individually identified and are interred in one grave. The group remains may contain remains of civilians and foreign nationals.

Initial active duty training. Training that provides basic military training and technical skill training required for all enlisted accessions.

Interment. The act of ground burial of casketed or cremated human remains.

Inurnment. The placement of an urn containing cremated remains in a niche.

Memorial marker. A headstone used to memorialize a service member or veteran whose remains are unavailable for reasons listed in § 553.20.

Memorial monuments. Monuments that contain remains or mark the location of remains in close proximity.

Memorial service or ceremony. Any formal group activity conducted within Arlington National Cemetery intended to honor the memory of a person or persons interred, inurned, or memorialized in Arlington National Cemetery. This term includes ''private memorial services,'' ''public memorial services,'' ''public wreath laying ceremonies'' and ''official ceremonies.''

Minor child. An unmarried natural child, stepchild, or adopted child of an eligible service-connected parent, when the child

(1) Has no dependents of his/her own; and

(2) Is less than 21 years old or is less than 23 years old and is taking a fulltime course or study at an approved institution.

Missions (Class I). (1) Class I missions as provided in State Department memorandum dated March 21, 1988: Ankara, Turkey; Athens, Greece; Bangkok, Thailand; Beijing, China; Bonn, Federal Republic of Germany; Brasilia, Brazil; Canberra, Australia; Cairo, Egypt (Arab Republic of); Islamabad, Pakistan; Jakarta, Indonesia; London, England (United Kingdom); Madrid, Spain; Manila, Philippines; Mexico, D.F., Mexico; Moscow, U.S.S.R.; Nairobi, Kenya; New Delhi, India; Ottawa, Canada; Paris, France; Pretoria, South Africa; Rome, Italy; Riyadh, Saudi Arabia (formerly Jeddah); Seoul, Korea; Tokyo, Japan.

(2) *Other Missions:* U.S. Mission to the Organization of American States, Washington, DC.; U.S. Mission to the North Atlantic Treaty Organization (U.S. NATO), Brussels, Belgium; U.S. Mission to the United Nations, New York, NY.

Niche. A space in a columbarium reserved for the placement of cremated remains.

Official ceremony. A memorial service or ceremony approved by the Superintendent, Arlington National Cemetery, in which the primary participants are representatives of the United States Government, a state government, a foreign government, or an international organization who are authorized to participate in an official capacity.

Partisan activities. Partisan activities include:

(1) Commentary in support of, or in opposition to, or attempts to influence, any current policy of the United States Armed Forces, the Government of the United States, or any state of the United States;

(2) Epousing the cause of a political party; or

(3) Having a primary purpose to gain publicity or engender support for any group or cause.

Permanently dependent child. An unmarried natural child, stepchild, or adopted child of the eligible service-connected parent, when the child:

(1) Has no dependents of his/her own, and

(2) Is permanently dependent on one or both of his/her parents because of a physical or mental disability incurred before age 21 that renders the child incapable of self-support.

Person authorized to direct disposition. The person primarily entitled to direct disposition of remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with 10 U.S.C. 1482 and Department of Defense Instruction 1300.22, Mortuary Affairs Policy.

Personal representative. A person who manages the legal affairs of another, such as a power of attorney or executor.

Primary eligible. The veteran of the United States Armed Forces whose last period of service ended honorably and entitles him or her to interment or inurnment in Arlington National Cemetery.

Primary next of kin. The person most closely related to the decedent is considered the primary next of kin. This is normally the spouse for married persons and the parents for unmarried service members/individuals. The precedence of next of kin with equal relationships to the casualty is governed by seniority (age). Equal relationship situations include divorced parents, children and siblings. Minor children's rights are exercised by their parents or legal guardian. The adult next of kin is usually the first person highest in the line of succession who has reached the age of eighteen. Even if a minor, the spouse is always considered the primary next of kin. The following order of precedence is used to identify the primary next of kin:

(1) Spouse.

(2) Natural, adopted, step and illegitimate children.

(3) Parents.

(4) Persons standing in loco parentis.

(5) Persons granted legal custody of the individual by a court decree of statutory provision.

(6) Brothers or sisters, to include half-blood and those acquired through adoption.

(7) Grandparents.

(8) Other relatives in order of relationship to the individual according to civil laws.

(9) If no other persons are available, the Secretary of the Military Department may be deemed to act on behalf of the individual.

Private memorial service. A memorial service or ceremony conducted at a private gravesite within Arlington National Cemetery by a group of relatives and/or acquaintances of the person interred or to be interred at that gravesite. Private memorial services may be closed to the media and public.

Public memorial service. A ceremony conducted by members of the public at the Arlington National Cemetery Amphitheater, the Confederate Memorial, the Mast of the Maine, the John F. Kennedy Grave, or a historic shrine or a gravesite within Arlington National Cemetery. All public memorial services are open to the public.

Public wreath-laying ceremony. Ceremony in which members of the public, assisted by the Tomb Guards, present a wreath or similar memento at the Tomb of the Unknowns.

Section. A subdivision of the cemetery containing graves, memorials, and columbariums. Each section is bordered by roadways, walls, and/or other sections.

Spouse. A person of the opposite sex who is a husband or a wife resulting from a lawful marriage.

State capital crime. Under state law, the willful, deliberate, or premeditated unlawful killing of another human being for which a life sentence or the death penalty may be imposed.

Subversive activity. The offenses involving subversive activity are those defined in the following provisions of:

(1) Title 18, U.S. Code: Sections 792 (Harboring or Concealing Persons), 793 (Gathering, Transmitting, or Losing Defense Information) (excluding Subsection (f)), 794 (Gathering or Delivering Defense Information to Aid Foreign Government), 798 (Disclosure of Classified Information); 2381 (Treason), 2382 (Misprison of Treason), 2383 (Rebellion or Insurrection), 2384 (Seditious Conspiracy), 2385 (Advocating Overthrow of Government), 2387 (Activities Affecting Armed Forces Generally), 2388 (Activities Affecting Armed Forces During War), 2389 (Recruiting for Service Against United States), 2390 (Enlistment to Service Against United States); and Chapter 105 (Sabotage).

(2) Sections 222, 223, 224, 225 and 226 of the Atomic Energy Act of 1954, (42 U.S.C. 2272 (Violation of Specific Sections), 2273 (Violation of Sections), 2274 (Communication of Restricted Data), 2275 (Receipt of Restricted Data) and 2276 (Tampering with Restricted Data)).

(3) Section 4 of the Internal Security Act of 1950—(50 U.S.C. 783—Communication of Classified Information by Government employees).

(4) Title 10, U.S. Code: Sections 894, 904 and 906 (Mutiny or Sedition, Aiding the Enemy, and Spies).

Symbolic container. An object such as a casket, urn, box, jar, or bottle that is used to only hold a material object such as soil, photos, hair, clothing or other items of remembrance representing a decedent by association, resemblance, or convention, especially a material object used to represent something intangible. A symbolic container does not include containers that hold any portion of human remains for burial or inurnment purposes.

Transinterment or transinurnment. A transinterment or transinurnment involves the removal of remains from an Arlington National Cemetery gravesite or niche for the purpose of reburial or reinurnment in Arlington National Cemetery. Transinterment or transinurnment ordinarily occur for reasons related to the administration, operation, or maintenance of Arlington National Cemetery.

Unmarried adult child. A natural child, stepchild, or adopted child of the primary eligible service-connected parent, when the child:

(1) Has no dependents of his/her own at the time of death;

(2) Is not married at death; and

(3) Is 21 years of age or older.

§ 553.2 Purpose.

The following specifies the authority and assigns the responsibilities for the development, maintenance, administration, and operation of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery. These cemeteries are under the jurisdiction of the Department of the Army and are civil works activities.

§ 553.3 Statutory authority.

(a) 24 U.S.C., Chapter 7, entitled ''National Cemeteries,'' provides basic statutory authority with regard to National Cemeteries. Several sections of Title 24 of the United States Code were repealed by Section 7(a) of the National Cemeteries Act of 1973 (Pub. L. 93–43, 87 Stat. 82). Section 7(b), however, provided that nothing in Section 7(a) affected the functions, powers, and duties of the Secretary of the Army with respect to those cemeteries, memorials, or monuments under his jurisdiction. As a result, the Secretary of the Army retains the authority reflected in those provisions enumerated in Section 7(a).

(b) The Secretary of the Army reserves the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies of Army Regulation 290–5.

§ 553.4 Scope and applicability.

(a) *Scope.* The development, maintenance, administration, and operation of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery are governed by this Part, Army Regulation 290–5, and Department of Army Pamphlet 290–5. Army Regulation 210–190 assigns responsibilities for the development, maintenance, administration, and operation of Army post cemeteries.

(b) *Applicability.* These provisions are applicable to those persons on Arlington National Cemetery grounds and those persons involved in Arlington National Cemetery matters.

§ 553.5 Responsibilities.

In accordance and consistent with General Orders Number 13, dated October 29, 2004, and Army Regulation 290–5, the responsibilities of Headquarters, Department of the Army, are:

(a) The Assistant Secretary of the Army (Civil Works) will formulate and oversee the program and budget for the Army National Cemeteries, including proposals for placement of memorials and headstones.

(b) The Assistant Secretary of the Army (Manpower and Reserve Affairs) will formulate and oversee interment, inurnment, and memorialization policies for the Army National Cemeteries.

(c) The Chief of Public Affairs will formulate and oversee the public affairs policy for the Army National Cemeteries.

(d) The Commander, Military District of Washington, will

(1) Coordinate all official ceremonies at Arlington National Cemetery and State funerals, with the Superintendent, Arlington National Cemetery.

(2) Provide Army military honors for private memorial services and Army ceremonial support for the Army National Cemeteries, including the honor guard at the Tomb of the Unknowns.

(e) The Superintendent, Arlington National Cemetery, will

(1) Oversee day-to-day execution of the Army National Cemeteries Program in accordance with applicable law and policy, including the administration, operation, and maintenance of the Army National Cemeteries.

(2) Be responsible for private ceremonies at the Army National Cemeteries, including funerals and memorial services for interment and inurnment, public wreath laying ceremonies, and public ceremonies, other than those official public ceremonies assigned to the Commander, Military District of Washington.

(3) Coordinate on all official ceremonies at Arlington National Cemetery, including public wreath laying ceremonies and State funerals.

(f) The Chief of Engineers will provide technical assistance on a reimbursable basis to the Army National Cemeteries. Technical assistance includes, but is not limited to, planning, engineering, construction management, real estate, environmental, and cultural resources.

§ 553.6 Federal jurisdiction.

Where the State legislature has given consent of that State to purchase land which now comprises an Army National Cemetery, the jurisdiction and power of legislation of the United States over Army National Cemeteries will, in all courts and places, be held to be the same as is granted by Article 1, Section 8, of the Constitution of the United States.

§ 553.7 Power of arrest.

(a) The Superintendents of Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery are authorized to arrest any person who willfully does any of the following within the limits of Arlington National Cemetery or U.S. Soldiers' and Airmen's Home National Cemetery, respectively:

(1) Destroys, mutilates, defaces, damages, or removes any monument, gravestone, or other structure.

(2) Destroys, cuts, breaks, injures, or removes any tree, shrub, or plant.

(b) The authority to arrest is based on 24 U.S.C. 286. Although Section 7(a) of Public Law 93–43, 87 Stat. 82, repealed 24 U.S.C. 286 inter alia, with respect to certain national cemeteries, Section 7(b) provided that nothing in 7(a) affected the functions, powers, and duties of the Secretary of the Army with respect to those cemeteries, memorials, or monuments under his jurisdiction. As a result, the Superintendents, acting on behalf of the Secretary of the Army, retain the authority to arrest persons for the above acts.

§ 553.8 Standards for managing Army National Cemeteries.

The following standards will be used to develop, operate, maintain, administer, and support Army National Cemeteries. These standards will also be considered in developing the annual budget.

(a) Army National Cemeteries are permanent shrines for honoring deceased members of the United States Armed Forces. The standards for constructing, maintaining, and operating these cemeteries will be commensurate with the high purpose to which these facilities are dedicated.

(b) Structures and facilities provided for these cemeteries will be of a scope, dignity, and aesthetic design suited to the purpose for which they are intended.

(c) Army National Cemeteries will be enclosed by a substantial stone or iron fence with gates.

(d) Army National Cemeteries will be beautified by landscaping and by special features based on historical aspects, location, or other relevant factors.

(e) Accommodations and services provided to the next of kin for the honored dead and to the general public will be of high quality.

§ 553.9 Arlington Memorial Amphitheater.

(a) In accordance with 24 U.S.C. 295a:

(1) In January of each year, the Secretary of Defense or his/her designee may send recommendations to Congress on memorials to be erected and the remains of deceased members of the United States Armed Forces to be entombed in the Arlington Memorial Amphitheater in Arlington National Cemetery.

(2) No memorial may be erected and no remains may be entombed in the Arlington Memorial Amphitheater unless authorized by Congress.

(3) The character, design, or location of any memorial authorized by Congress for placement in the Amphitheater is subject to the approval of the Secretary of Defense or his/her designee.

(b) Any request regarding inscriptions or memorials within the Arlington Memorial Amphitheater will be referred to the Superintendent, Arlington National Cemetery, for processing. The Superintendent will seek the advice of the Commission of Fine Arts in such matters, in accordance with 40 U.S.C. 9102.

(c) Tributes donated for placement in the Unknowns Memorial Display Room in the Amphitheater are not memorials as contemplated under this section. Tributes are covered under § 553.38.

§ 553.10 Accountability and procurement of property, supplies, equipment, and services.

(a) Army National Cemetery property, supplies, equipment, and services will be procured and accounted for as outlined in Department of Army Pamphlet 290–5. These items will also be procured as stated in the Federal Acquisition Regulation and as further supplemented by Department of Defense and the Army.

(b) Arlington National Cemetery will maintain a real property inventory for both Army National Cemeteries in accordance with applicable Army policies and procedures.

§ 553.11 Permission to install poles, lines, and water and sewer pipes.

(a) The installation of utilities in Army National Cemeteries, including but not limited to, communications (*i.e.*, telephone and fiber optic lines), electric, natural gas, water, storm drainage, and sanitary sewers, will not be permitted unless authorized by the Superintendent, Arlington National Cemetery.

(b) Requests for licenses, permits, or easements to install water, gas, or sewer lines, or other utilities/equipment on or across an Army National Cemetery or an approach road in which the Government has a right-of-way, fee simple title, or other interest, must be sent to the Superintendent, Arlington National Cemetery, for action. Requests must include a complete description of the type of license, permit, or easement desired and a map showing the location of the project.

(c) Once approved by the Superintendent, Arlington National Cemetery, the request will be forwarded to the Baltimore District, U.S. Army Corps of Engineers, for implementation and issuance of the license, permit, or easement.

§ 553.12 Gifts.

(a) *Policy.* Acceptance of gifts will be handled in accordance with Army Regulation 1–100.

(b) *Processing.* (1) The Superintendent U.S. Soldiers' and Airmen's Home National Cemetery, will forward any offer of a gift for the U.S. Soldiers' and Airmen's Home National Cemetery to the Superintendent, Arlington National Cemetery, with all available information bearing upon the offer and its acceptability.

(2) Upon receipt of an offer of a gift to either the Arlington National Cemetery or the U.S. Soldiers' and Airmen's Home National Cemetery, the Superintendent, Arlington National Cemetery:

(i) May accept the gift, if within the authority delegated by the Secretary of the Army to the Superintendent, Arlington National Cemetery; or

(ii) Will advise the prospective donor that acceptance of the gift is subject to prior approval by the Secretary of the Army. The Superintendent, Arlington

National Cemetery, will provide a recommendation for or against acceptance, including an opinion regarding whether acceptance of the gift could raise ethical or conflict of interest concerns.

§ 553.13 Solicitations.

Other than the authorized mobile tour operations and the Visitors' Center gift shop, the solicitation of business within Arlington National Cemetery is prohibited. Violators who do not leave when so ordered or who unlawfully reenter the cemetery after being evicted will be subject to prosecution.

§ 553.14 Authority for interments, inurnments, and memorial sections.

(a) Army Regulation 290–5 authorizes interment in Arlington National Cemetery and U.S. Soldiers' and Airmens' Home National Cemetery under the provisions set forth in this section. The Act of May 14, 1948 (Pub. L. 80–526, 62 Stat. 234), as amended by the Act of September 14, 1959 (Pub. L. 86–260, 73 Stat. 547), and other laws specifically cited in this regulation, authorize interment in Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery under such regulations as the Secretary of the Army may, with the approval of the Secretary of Defense, prescribe.

(b) 38 U.S.C. 2409 provides that the Secretary of the Army may set aside suitable areas in Arlington National Cemetery for memorial sections to honor the memory of certain members of the United States Armed Forces and veterans. Such memorial plots will be in sections devoted solely to that purpose, and a marker issued by the Department of Veterans Affairs will be erected at Government expense in each plot dedicated to a particular individual or group of individuals.

(c) 38 U.S.C. 2410 requires the Secretary of the Army to designate an area in Arlington National Cemetery for the unmarked interment of ashes of persons eligible for interment in Arlington National Cemetery. The designated area must not be suitable for burial of casketed remains.

§ 553.15 Plans for gravesites, memorial areas, and niches.

(a) The Superintendents of Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery shall maintain detailed plans setting forth sections with gravesites, memorial areas with markers, and Columbariums with niches.

(b) New sections or areas will be opened and prepared for interments or for installing memorial markers only with the approval of the Superintendent, Arlington National Cemetery.

(c) The standard size for all gravesites for casketed remains is 5 feet by 10 feet. The standard size of gravesites for interment of urns containing cremated remains is 5 feet by 5 feet. The standard size of areas delineated by memorial markers is 5 feet by 5 feet. The standard size of niches is 13 inches tall by 10 inches wide by 18 inches deep.

§ 553.16 Assignment of gravesites or niches.

(a) All eligible persons will be assigned graves or niches without discrimination as to military rank, race, color, sex, religion, age, or national origin.

(b) One-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible family members must be made in the same gravesite or niche, except as noted in paragraph (d) of this section. The Superintendent, Arlington National Cemetery, may make additional space available upon the determination that assignment of a single gravesite is not practicable.

(c) Gravesites or niches will not be reserved or assigned prior to the time of need.

(d) Reservations for an adjoining gravesite at Arlington National Cemetery for a surviving spouse or veteran made in writing before October 16, 1961 (when the one-gravesite-per-family policy was established at Arlington National Cemetery), will remain in effect unless cancelled by the Superintendent, Arlington National Cemetery. The Superintendent may cancel a gravesite reservation for one of the following reasons:

(1) Upon determination that the surviving spouse remarried and remained so at the time of death;

(2) Upon notification that the reservee has been buried elsewhere;

(3) Upon notification that the reservee desires to or will be interred in the same grave with the predeceased, and doing so is feasible; or

(4) When it is known or estimated that the reservee would be 120 years of age and there is no record of correspondence with the reservee within the last two decades.

(e) In cases where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made) and no interment has yet been made in any of the sites, the one-gravesite-per-family policy will be applied. One gravesite reservation will be honored so long as the deceased meets the eligibility criteria for interment in Arlington National Cemetery current at the time of need.

(f) Where an active duty service member or veteran of the United States Armed Forces has been or will be interred as part of a group burial or memorialized in a Memorial Area at Arlington National Cemetery, the Superintendent, Arlington National Cemetery, will assign, at the time of need, a gravesite or niche for interment or inurnment of the eligible widow, widower, minor children, permanently dependent children, or certain unmarried adult children.

§ 553.17 Proof of eligibility.

(a) The estate of the deceased (or next-of-kin/personal representative) is responsible for providing appropriate documentation to verify the deceased's eligibility for interment or inurnment.

(b) At a minimum the following documents are required:

(1) Death Certificate;

(2) Proof of Eligibility of the primary eligible;

(3) Any additional documentation to establish the eligibility of spouses, children, or missing relatives, as appropriate (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement, if appropriate;

(5) Notarized statement, if appropriate, that the remains are unavailable for the reasons set forth in § 553.20; and

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains, if appropriate.

(c) The following documents may be used to establish eligibility of the primary eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty (all Services starting in the 1950s);

(2) WD AGO 53 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service;

(4) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(5) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps;

(6) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member); and

(7) A statement from the commanding officer stating the active duty service member was in good standing at the time of death, e.g., not pending disciplinary or adverse administrative action. If the active duty service member was pending action, the provisions of § 553.25 apply.

(d) Veterans who desire copies of their military records should write to: National Personnel Records Center, Attention: Military Personnel Records, 9700 Page Avenue, St Louis, Missouri 63132 or go online at *http://www.vetrecs.archives.gov.* Individuals who are not veterans or the next of kin of the veteran for whom they are requesting records must complete Standard Form 180.

(e) The burden of proving eligibility lies with the party who requests the burial. The Superintendent, Arlington National Cemetery, will determine whether the submitted proof (documentary or other) is sufficient to support a finding of eligibility.

§ 553.18 Eligibility for interment in Arlington National Cemetery.

The following persons are eligible for interment in Arlington National Cemetery, unless otherwise prohibited. The last period of active duty of the veteran of the United States Armed Forces must have ended honorably.

(a) Any service member on active duty in the United States Armed Forces (except those service members serving on active duty for training only).

(b) Reserve personnel who die while on active duty for special work.

(c) Reserve personnel who have reached the age of 60, are otherwise eligible to receive military retired pay, but who have been retained in the Reserve program and who served one period of active duty for other than training.

(d) Any veteran retired from active military service with the United States Armed Forces and is entitled to receive military retired pay.

(e) Any veteran retired from the Reserves who:

(1) Served a period of active duty (other than active duty for training);

(2) Has a total of twenty years combined service;

(3) Is carried on an official retired list; and

(4) Is receiving or was eligible to receive military retired pay (currently payable at age 60).

(f) Any service member who is retired for disability and has been placed on the Permanent Disability Retired List and who served a period of active duty (other than for training).

(g) Any veteran separated honorably from United States Armed Forces prior to October 1, 1949, for medical reasons with 30 percent or greater disability rating effective on the day of discharge.

(h) Any veteran of the United States Armed Forces awarded one of the following decorations:

(1) Medal of Honor;

(2) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(3) Silver Star; or

(4) Purple Heart.

(i) The President of the United States and any former President of the United States.

(j) Any veteran of the United States Armed Forces who served on active duty (other than active duty for training) and who held any of the following positions:

(1) Vice President;

(2) Member of Congress;

(3) Chief Justice of the United States or Associate Justice of the Supreme Court of the United States.

(4) An office listed, at the time the person held the position, in 5 U.S.C. 5312 or 5313 (Levels I and II of the Executive Schedule).

(5) The chief of a mission, who was, at any time during his/her tenure before January 5, 1986, classified in Class I under the provisions of Sec. 411, Act of August 13, 1946, 60 Stat. 1002. Missions (Class I) are defined in § 553.1.

(k) Any former prisoner of war who served honorably in the United States Armed Forces while a prisoner of war, whose last period of active duty terminated honorably, and who died on or after November 30, 1993. See Sec. 1176, Public Law 103–160; 38 U.S.C. 2402 Note.

(l) The spouse, widow, or widower of an active duty service member of the United States Armed Forces or eligible veteran who is or will be interred in Arlington National Cemetery. A former spouse of an active duty service member or a veteran, someone who is no longer the legal husband or wife of the service member or veteran due to annulment, divorce, etc., is not eligible for interment.

(m) A widow or widower who remarries is eligible for interment if remarried at the time of need only if there are no children from any subsequent marriage(s), both the subsequent spouse and any children from the prior marriage to the primary eligible agree to the interment and relinquish any claim for interment in the same gravesite in a notarized statement(s), and the subsequent spouse relinquishes any claim for interment in the same gravesite.

(1) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of a widow or widower must be accompanied by:

(i) A notarized statement from the subsequent spouse agreeing to the interment and relinquishing any claim for interment in the same gravesite.

(ii) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment of their parents.

(2) [Reserved]

(n) The widow or widower of an active duty service member of the United States Armed Forces or an eligible veteran, who was:

(1) Lost or buried at sea, temporarily interred overseas due to action by the United States Government, or officially determined to be missing in action.

(2) Buried in an overseas U.S. military cemetery maintained by the American Battle Monuments Commission.

(3) A member of the United States Armed Forces interred in Arlington National Cemetery as part of a group burial.

(o) As these groups are defined in this Part, the minor children, permanently dependent children, and certain unmarried adult children of an active duty service member or eligible veteran of the United States Armed Forces, who is or will be interred in Arlington National Cemetery, if space is available.

(1) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of a permanently dependent child must be accompanied by:

(i) A notarized statement from an individual who has direct knowledge as to the marital status and degree of dependency of the deceased child; and

(ii) A physician's statement regarding the nature and duration of the physical or mental disability.

(2) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of an unmarried adult child must be accompanied by:

(i) A notarized statement from an individual who has direct knowledge as to the marital status of the deceased; and

(ii) A statement demonstrating some or all of the following factors, as appropriate:

(A) The deceased lived most of his or her adult life with one or both parents, one or both of whom are otherwise eligible for interment;

(B) The deceased has no children or siblings, or other family members, other than the eligible veteran, who might seek interment on the basis of the deceased's interment.

(C) The deceased's children, siblings, or other family members, other than the eligible veteran, waive any derivative right to be interred at Arlington National Cemetery, in accordance with the Arlington National Cemetery Burial Agreement.

(p) Unless ineligible or otherwise prohibited, the parents of minor

children, permanently dependent children, or certain unmarried adult children, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death.

(q) A veteran of the United States Armed Forces may be buried in the same grave with the primary eligible who is already interred, if the veteran is a close relative (as defined in § 553.1) of the primary eligible person, and meets the following conditions:

(1) The veteran does not have any children;

(2) The veteran will not occupy space reserved for the spouse or minor, permanently dependent, or unmarried adult children of the primary eligible person;

(3) All other close relatives of the primary eligible person concur with the interment of the veteran with the primary eligible person by signing a notarized statement;

(4) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery. The Superintendent, Arlington National Cemetery, may set aside the spouse's waiver, provided space is available in the same gravesite, there is room for inscription on the headstone, and all close relatives of the primary eligible concur;

(5) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds; and

(6) There is sufficient space on the headstone to accommodate all names.

§ 553.19 Eligibility for group burial in Arlington National Cemetery.

(a) The Superintendent, Arlington National Cemetery, may authorize a group interment in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member of the United States Armed Forces, die during a military related activity and not all of the active duty service member's remains can be individually identified.

(b) Before authorizing a group interment that includes both United States and foreign decedents, the Superintendent, Arlington National Cemetery, will notify the Department of State and request that the Department of State notify the appropriate foreign embassy.

§ 553.20 Eligibility for memorialization in an Arlington National Cemetery Memorial Area.

(a) A memorial marker may be placed in an Arlington National Cemetery Memorial Area to honor the memory of active duty service members and veterans of the United States Armed Forces, who meet the eligibility criteria for interment in Arlington National Cemetery and:

(1) Who are missing in action;

(2) Whose remains have not been recovered or identified;

(3) Whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) Whose remains were donated to science; or

(5) Whose remains were cremated and whose ashes were scattered without interment of any portion of the ashes.

(b) A family member who meets the eligibility criteria for interment in Arlington National Cemetery, set forth in § 553.18 and whose remains are not available for one of the reasons listed in paragraph (a) of this section may only be memorialized on the reverse side of an existing memorial marker.

(c) When the remains of a service member or veteran are unavailable for one of the reasons listed in paragraph (a) of this section, and an eligible family member who predeceased the member or veteran is already interred or inurned in Arlington National Cemetery, the member or veteran may only be memorialized on the existing headstone or a replacement headstone may be ordered with new inscription. Consistent with the one-gravesite-per-family policy, a separate marker in the Memorial Area is not authorized.

(d) When a memorial marker for service member or veteran is already in place in a Memorial Area, and an eligible family member is subsequently interred or inurned in Arlington National Cemetery, an inscription memorializing the member or veteran will be placed on the new headstone or niche cover. Consistent with the one-gravesite-per-family policy, the memorial marker will be removed from the Memorial Area.

§ 553.21 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.

(a) The cremated remains of any person eligible for interment in Arlington National Cemetery may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Ashes must be interred in a biodegradable container or placed directly into the ground without a container. Ashes are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) No headstone or marker is authorized for any person choosing this method of interment. A permanent register will be maintained in the Administration Building listing all persons interred at this site.

(d) Consistent with the one-gravesite-per-family policy, all family members must be interred in the Unmarked Area once an eligible person is interred under this option. No additional gravesite, niche, or memorial marker in a Memorial Area will be authorized.

§ 553.22 Eligibility for inurnment in Arlington National Cemetery.

The following persons are eligible for inurnment in Arlington National Cemetery. The last period of active duty of the service member or veteran of the United States Armed Forces must have ended honorably.

(a) Any person eligible for interment in Arlington National Cemetery.

(b) Any veteran of the United States Armed Forces who served on active duty other than active duty for training.

(c) Any member of a Reserve component of the United States Armed Forces who dies while:

(1) On active duty for training or performing full-time duty under Title 32 of the United States Code;

(2) Performing authorized travel to or from active duty for training or full-time service;

(3) On authorized inactive duty training, including training performed as a member of the Army National Guard or the Air National Guard; or

(4) Is hospitalized or being treated at the expense of the United States for an injury or disease incurred or contracted while on active duty for training or full-time service, traveling to or from active duty for training or full-time service, or on inactive duty training, or undergoing hospitalization or treatment at the expense of the United States.

(d) Any member of the Reserve Officers Training Corps of the Army, Navy, or Air Force whose death occurs while:

(1) Attending an authorized training camp or cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Is hospitalized or receiving treatment at the expense of the United States for injury or disease incurred while attending that camp or cruise, performing that travel, or receiving that hospitalization or treatment at the expense of the United States.

(e) Any citizen of the United States who, during any war in which the United States has been engaged, served in the Armed Forces of any government allied with the United States during that war; whose last service ended honorably by death or otherwise; and who was a

citizen of the United States at the time of entry into that service and at the time of death.

(f) A former member of a group certified as active military service for the purpose of receiving benefits by the Department of Veterans Affairs by the provisions of 38 CFR 3.7(x) and Public Law 95–202.

§ 553.23 Arlington National Cemetery interment/inurnment agreement.

(a) Eligible family members who predecease the primary eligible person may be interred or inurned in Arlington National Cemetery if the primary eligible person signs an agreement to be interred in the same gravesite or inurned in the same niche at his or her time of need and agreeing that his or her estate shall pay for all expenses related to disinterment or disinurnment from Arlington National Cemetery if he or she is not interred or inurned as agreed.

(b) If the primary eligible becomes ineligible for interment or inurnment in Arlington National Cemetery or the executor or next of kin decides that the primary eligible will be interred or inurned elsewhere, the spouse's or children's remains may be removed from Arlington National Cemetery at no cost to the Government. The Superintendent, Arlington National Cemetery, may waive this provision under extraordinary circumstances.

§ 553.24 Eligibility for burial in United States Soldiers' and Airmen's Home National Cemetery.

(a) Only the residents of the United States Soldiers' and Airmen's Home are eligible for interment in United States Soldiers' and Airmen's Home National Cemetery (see 24 U.S.C. 412 for resident eligibility criteria).

(b) The Board of Commissioners of the United States Soldiers' and Airmen's Home will prescribe additional rules governing burial in the Soldiers' Home National Cemetery.

§ 553.25 Persons ineligible for interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers' and Airmen's Home National Cemetery.

(a) Unless otherwise eligible for interment or inurnment under the eligibility criteria set forth, a father, mother, brother, sister, or in-law is not eligible for interment or inurnment solely on the basis of their relationship to an eligible service member or veteran of the United States Armed Forces, even though the individual is:

(1) Dependent on the service member or veteran for support; or

(2) A member of the service member's or veteran's household.

(b) A person whose last separation from one of the United States Armed Forces was less than an honorable discharge (i.e., General Discharge issued to a service member whose military record is not sufficiently meritorious to warrant an honorable discharge, Under Other Than Honorable Conditions Discharge, Bad Conduct Discharge, Dishonorable Discharge, or Dismissal) is not eligible for interment or inurnment, regardless of whether the person:

(1) Received any other veterans' benefits.

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the United States Armed Forces, but has not yet entered on active duty is not eligible for interment or inurnment.

(d) A former spouse of a primary eligible service member or veteran, e.g., marriage ended in divorce or annulment is not eligible for interment or inurnment.

(e) Otherwise eligible family members, e.g., spouse or child, if the primary eligible service member or veteran was not or will not be interred or inurned at Arlington National Cemetery or the United States Soldiers' and Airmen's Home National Cemetery. This provision does not apply to eligible family members for whom a gravesite or niche may be assigned under § 553.16.

(f) A person convicted in a Federal court or by a United States court-martial of any offense involving subversive activity or the assassination or attempted assassination of certain national leaders as described 18 U.S.C. 1751 including, but not limited to the President of the United States; President-elect; Vice President of the United States, Vice President-elect, and if there is no Vice President, the next in succession, is not eligible for interment or inurnment.

(g) Non-human remains, including remains of animals, shall not be interred or inurned at Arlington National Cemetery or the United States Soldiers and Airmen's Home National Cemetery. If non-human remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or such other incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but in no manner shall the identity of the non-human remains be inscribed on a niche, marker, or headstone.

(h) An active duty service member who dies while on active duty is not eligible for interment or inurnment if there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a less than honorable discharge being imposed.

(1) *Preliminary Inquiry*. The Superintendent, Arlington National Cemetery, shall, upon the death of an active duty service member, obtain information from the deceased member's commander regarding the character of the deceased member's service.

(2) *Decision after Preliminary Inquiry*. (i) If, after receiving the information described in paragraph (h)(1) of this section, the Superintendent determines that sufficient evidence exists for further proceedings under this section, the Superintendent shall present the decedent's representative with a written notification of such preliminary determination, and provide a dated, written notice of the representative's procedural options.

(ii) [Reserved]

(3) *Notice and Procedural Options*. The notice of procedural options shall indicate that, within fifteen calendar days of the date of the notice, the decedent's representative may:

(i) Withdraw the request for interment, inurnment, or memorialization;

(ii) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn; or

(iii) Request a hearing.

(4) *Time computation*. The fifteen calendar day time period begins on the calendar day after the earlier of the date the notice of procedural options is sent by mail or electronic means to the decedent's representative or delivered in person to the representative and ends at Arlington National Cemetery's regular closing time on the fifteenth day. It does include weekends and holidays. If Arlington National Cemetery is closed on the fifteenth day, then the end of the time period will be the regular closing time of next day that Arlington National Cemetery is open.

(5) *Hearing*. The purpose of the hearing is to allow the decedent's representative to present additional information regarding whether there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a less than honorable discharge being imposed. In lieu of making a personal appearance at the hearing, the decedent's representative may submit relevant documents for consideration by the

Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee.

(i) If a formal hearing with personal appearance is requested, the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee, will conduct the hearing.

(ii) The hearing will be conducted in an informal manner.

(iii) The rules of evidence shall not apply.

(iv) The decedent's representative and witnesses may appear, under oath, at no expense to the government.

(v) Oaths must be administered by an appropriate Army representative designated by the Assistant Secretary of the Army (Manpower & Reserve Affairs) and who possesses the legal authority to administer oaths.

(vi) The hearing shall be recorded. Upon request, a copy of the recording will be provided to the decedent's representative.

(6) *Final Determination*. After considering any additional information submitted by the decedent's representative the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee, shall determine the service member's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(7) *Notice of Decision*. The Superintendent shall provide written notification to the decedent's representative of the Assistant Secretary of the Army's decision.

§ 553.26 Prohibition of interment, inurnment, or memorialization of persons who have committed certain crimes.

(a) *Prohibition*. Pursuant to 38 U.S.C. 2411, the interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers and Airmen's Home National Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Superintendent, Arlington National Cemetery, by the United States Attorney General, prior to approval of an interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime, as defined in § 553.1, for which a life sentence or the death penalty may be imposed. Approval does not occur until the deceased is interred, inurned, or memorialized.

(2) Any person identified in writing to the Superintendent, Arlington National Cemetery by the appropriate State official, prior to approval of an interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime, as defined in § 553.1, for which a life sentence or the death penalty may be imposed. Approval does not occur until the deceased is interred, inurned, or memorialized.

(3) Any person found under procedures specified in § 553.27 to have committed a State or Federal capital crime but who has avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(b) *Notice*. The Superintendent, Arlington National Cemetery, is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility*. (1) If notice has not been received, but the Superintendent has reason to believe that the person may have been convicted of a State or Federal capital crime, as defined in § 553.1, the Superintendent shall seek written confirmation from:

(i) The United States Attorney General, with respect to suspected Federal capital crimes; or

(ii) An appropriate State official, with respect to suspected State capital crimes.

(2) The Superintendent will defer decision on whether to inter, inurn, or memorialize a deceased until written confirmation is received.

§ 553.27 Findings concerning a commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary Inquiry*. If the Superintendent, Arlington National Cemetery, has reason to believe that a decedent may have committed a Federal or State capital crime (as defined under these regulations), but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the Superintendent, with the advice of Army legal counsel, will initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after Preliminary Inquiry*. If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Superintendent determines that sufficient evidence exists for further proceedings under this section, the Superintendent shall present the decedent's representative with a written notification of such preliminary determination and a dated, written notice of the representative's procedural options.

(c) *Notice and Procedural Options*. The notice of procedural options shall indicate that, within fifteen days of the date of the notice, the decedent's representative may:

(1) Withdraw the request for interment, inurnment, or memorialization;

(2) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn; or

(3) Request a hearing.

(d) *Time computation*. The fifteen calendar day time period begins on the calendar day after the earlier of the date the notice of procedural options is sent by mail or electronic means to the decedent's representative or delivered in person to the representative and ends at Arlington National Cemetery's regular closing time on the fifteenth day. It does include weekends and holidays. If Arlington National Cemetery is closed on the fifteenth day, then the end of the time period will be the regular closing time of the next day that Arlington National Cemetery is open.

(e) *Hearing*. The purpose of the hearing is to allow the decedent's representative to present additional information regarding whether the person committed a Federal or State capital crime (as defined under these regulations) that would prohibit interment, inurnment, or memorialization in Arlington National Cemetery or the United States Soldiers' and Airmen's Home National Cemetery. In lieu of making a personal appearance at the hearing, the decedent's representative may submit relevant documents for consideration by the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee.

(1) If a formal hearing with personal appearance is requested, the Assistant Secretary of the Army (Manpower and Reserve Affairs), or appropriate designee, will conduct the hearing.

(2) The hearing will be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The decedent's representative and witnesses may appear, under oath, at no expense to the government.

(5) Oaths must be administered by an appropriate Army representative designated by the Assistant Secretary of the Army (Manpower and Reserve Affairs) and who possesses the legal authority to administer oaths.

(6) A stenographer shall prepare a transcript of the proceedings. Upon request, a copy of the transcript will be provided to decedent's representative.

(f) *Final Determination*. After considering any additional information submitted by the decedent's representative, the Assistant Secretary of the Army (Manpower and Reserve Affairs) shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(g) *Notice of Decision*. The Superintendent shall provide written notification to the decedent's representative of the Assistant Secretary of the Army's decision.

§ 553.28 Exceptions to policies for interment or inurnment at Arlington National Cemetery.

(a) As a national military cemetery, eligibility standards for interment and inurnment are based on honorable military service. Exceptions to the standards of Arlington National Cemetery are rarely granted and even then are only granted for those significant contributions that directly and substantially benefited the United States military and warrant displacing an otherwise eligible veteran.

(b) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's time of death.

(c) Requests for an exception to the interment or inurnment eligibility policies should be submitted to the Superintendent, Arlington National Cemetery, and must include the following information.

(1) Copy of the most recent military discharge document, where applicable;

(2) Detailed, objective, and fact-based accounting of the individual's military and civilian service (contributions or acts) supporting the request for exception to policy;

(3) Public Disclosure Consent Form signed by the decedent's representative; and

(4) Any other related or pertinent document(s) that will assist in making a decision on granting an exception.

(d) The decedent's next of kin or representative is responsible for providing and certifying the accuracy of all necessary documents for justifying the request for exception to the interment or inurnment eligibility policies.

(e) The following may be considered by the Secretary of the Army before making a determination to either approve or disapprove a request for exception to the interment or inurnment eligibility policy.

(1) An individual's military service (contributions and acts) that directly and substantially benefited the United States military;

(2) An individual's civilian service (contributions and acts) that directly and substantially benefited the United States military, and which demonstrates the manner and level of sacrifice or heroism typical of military service;

(3) Whether the individual's combined military and civilian service presents extraordinary circumstances that justify approving an exception to policy; and

(4) The degree of consistency with past decisions.

(f) *Reconsideration*. Disapproved requests will only be reconsidered when the decedent's next of kin or representative submits new and substantive information not previously considered by the Secretary of the Army. Requests for reconsideration will be submitted directly to the Superintendent, Arlington National Cemetery. Requests for reconsideration not supported by new and substantive information will be denied by the Assistant Secretary of the Army (Manpower and Reserve Affairs). The Superintendent, Arlington National Cemetery, shall notify the decedent's next of kin or representative of the decision of the reconsideration.

§ 553.29 Cremated remains and interment or inurnment at Arlington National Cemetery.

(a) All cremated remains interred or inurned at Arlington National Cemetery must be accompanied with a Certificate of Cremation or death certificate that indicates cremation.

(b) Cremated remains which have been divided or split are not accepted for interment or inurnment at Arlington National Cemetery. An exception may be requested by the person authorized to direct disposition of remains or other authorized family representative to retain a small amount (less than 5 cubic centimeters or 5 milliliters) of cremated remains for sentimental reasons, hereafter referred to as sentimental cremated remains. The exception will be considered provided the person authorized to direct disposition or authorized family representative signs the Cemetery's designated notarized agreement stating they understand the following conditions:

(1) Dividing or splitting of remains is permanent. Sentimental cremated remains will not be later rejoined with cremated remains interred or inurned in Arlington National Cemetery due to the lack of scientific ability to positively identify that the cremated remains are those of the decedent.

(2) Family members must develop an alternative plan for dealing with the sentimental cremated remains, as rejoining sentimental cremated remains with those already interred or inurned at Arlington National Cemetery or any other Federal cemetery is not an option.

(3) Only one Federal cemetery gravesite, niche, or memorial marker is permitted. Interment, inurnment of cremated remains (sentimental or otherwise), or memorialization with a memorial marker in more than one Federal Cemetery is prohibited.

(c) The scattering of ashes and the burial of symbolic containers are prohibited in Army National Cemeteries.

(d) All cremation receptacles shall include a lid that closes tightly.

(e) When the caisson is used to transport cremated remains, the receptacle shall not exceed the following dimensions: height—11 inches, width—13 inches, length—16 inches.

§ 553.30 Subsequent remains.

In accordance with the one-gravesite-per-family policy, subsequently recovered remains of a decedent who is already interred or inurned in a Federal Cemetery shall not be interred or inurned at Arlington National Cemetery unless all remains are reunited. Subsequent remains are those additional remains recovered after a burial.

§ 553.31 Disinterments and disinurnments of remains.

(a) Interments and inurnments in Arlington National Cemetery and United States Soldiers' and Airmen's Home National Cemetery are considered permanent.

(b) Requests for disinterment or disinurnment of individually buried or inurned remains are considered as exceptions to this policy, and must be addressed to the Superintendent, Arlington National Cemetery, for decision. The request must include:

(1) Full statement of reasons for the disinterment or disinurnment of remains;

(2) Notarized statements from each close relative of the decedent that they do not object to the proposed disinterment or disinurnment;

(3) Notarized statement by a person who knows that the persons giving statements comprise all of the decedent's close relatives.

(4) An appropriate funding source for the disinterment or disinurnment, as disinterments and disinurnments of individually buried or inurned remains

must be accomplished without expense to the United States Government.

(c) The Superintendent, Arlington National Cemetery, shall carry out disinterments and disinurnments directed by a court of competent jurisdiction, upon presentment of a lawful, original court order and after consulting with appropriate Army legal counsel.

(d) Remains in a group burial at Arlington National Cemetery may only be disinterred if a portion of the remains of all individuals are still not individually identified after completion of identification processing of any subsequently recovered remains. It must be determined that available technology is likely to assist in the identification process of the previously interred group remains. Requests for disinterment of group remains must be addressed to the Superintendent, Arlington National Cemetery, by the appropriate Military Department's Secretary or designee for decision. The request must include:

(1) A statement from the Joint Prisoner of War/Missing in Action Accounting Command that remains have been subsequently recovered from the site of the casualty incident and identification of a portion of the remains of each individual United States citizen, legal resident, or former service member has not been previously made from either the remains originally recovered or from the subsequently recovered portions.

(2) Sufficient circumstantial and anatomical evidence from the Joint Prisoner of War/Missing in Action Accounting Command, which when combined with contemporary forensic or other scientific techniques, would lead to a high probability of individual identification of the interred group remains.

(3) Copies of the Military Department's notification to all the close relatives of the decedents advising them of the proposed disinterment.

(4) A time period identified by the Joint Prisoner of War/Missing in Action Accounting Command during which it proposes to perform forensic or scientific techniques for individual identification processing.

(5) An anticipated time period as to when the Joint Prisoner of War/Missing in Action Accounting Command will return any unidentified remains to Arlington National Cemetery or will notify the cemetery that individual identifications of the group remains are complete and no remains will be returned.

(e) Distinterment or disinurnment is not permitted for the sole purpose of splitting remains or permanently keeping any portion of the remains in a location other than Arlington National Cemetery.

(f) Disinterment of previously designated group remains for the sole purpose of the individually segregating the group remains is not permitted.

§ 553.32 Transinterments or transinurnments of remains.

(a) The Superintendent, Arlington National Cemetery, may authorize transinterments and transinurnments of remains if necessary for the proper administration, operation, and maintenance of Arlington National Cemetery.

(b) The Superintendent, Arlington National Cemetery, shall document each transinterment or transinurnment by a memorandum that sets forth the reasons for the transinterment or transinurnment.

(c) Transinterments and transinurnments shall be accomplished at Government expense.

(d) The Superintendent, Arlington National Cemetery, will make reasonable attempts to notify the decedent's family of the transinterment or transinurnment.

§ 553.33 Design of government headstones, niche covers, and memorial markers.

(a) Headstones and memorial markers will be white marble in an upright slab design. Flat-type granite markers may be used when the terrain or other obstruction precludes use of an upright marble headstone or memorial marker.

(b) Niche covers will be white marble.

(c) The Superintendent, Arlington National Cemetery, will design the headstone or memorial marker erected for a group burial.

§ 553.34 Inscriptions on government headstones, niche covers, and memorial markers.

(a) Inscriptions on Government headstones, niche covers, and memorial markers will be made according to the policies and specifications of the Secretary of the Department of Veterans Affairs.

(b) Only military ranks and promotions granted pursuant to Title 10 of the U.S. Code will be engraved on government headstones, niche covers, and memorial markers. Honorary promotions granted by states, governors, and others shall not be inscribed on headstones, niche covers, or memorial markers.

(c) Memorial markers must also include the words ''In Memory of'' preceding the inscription.

(d) The words ''In Memory of'' will not precede the inscription of a decedent whose remains are interred or inurned.

(e) Inscriptions for private headstones and markers will conform to the requirements set forth in Army Regulation 290–5.

§ 553.35 Headstones and markers at private expense.

(a) Construction of headstones and markers at private expense in lieu of government headstones is permitted only in sections of Arlington National Cemetery in which private memorials and markers were authorized as of January 1, 1947. These headstones will be of simple design, dignified, and appropriate for a military cemetery as determined by the Superintendent, Arlington National Cemetery.

(b) The Superintendent, Arlington National Cemetery, must approve the design and inscription of a private headstone or marker prior to its construction and placement. In addition, placement of a private headstone or marker is conditional upon the next-of-kin agreeing in writing to maintain it in a manner acceptable to the government. Should the headstone become unserviceable at any time in the future and the next-of-kin fails to repair or replace it, the Superintendent, Arlington National Cemetery, reserves the right to remove and dispose of the headstone and replace it with a standard, government-type headstone. All private headstones will be designed to conform to the dimensions and profiles specified in Army Regulation 290–5.

(c) The construction of a headstone to span two graves will be permitted only in those sections in which headstones are presently spanning two graves and only with the express understanding that in the event both graves are not utilized for burials, the headstone will be relocated to the center of the occupied grave, if possible. Such relocation must be accomplished at no expense to the government in accordance with the provisions of this part. The Superintendent, Arlington National Cemetery, reserves the right to remove and dispose of the headstone and to mark the grave with a government headstone or marker if the next-of-kin or other representative of the decedent fails to relocate the headstone as requested by the Department of the Army.

(d) Separate headstones may be constructed on a lot (two graves) for a service member and spouse, provided that each headstone is set at the head of the grave after interment has been made.

(e) At the time a headstone is purchased, arrangements should be

made with an appropriate commercial firm to ensure that additional inscriptions will be promptly inscribed following each succeeding interment in the gravesite. Foot markers are only authorized when there is no available space for an inscription on the front or rear of a private headstone. Foot markers must be authorized by the Superintendent, Arlington National Cemetery.

(f) Except as may be authorized for marking group burials, ledger monuments of freestanding cross design, narrow shafts, or mausoleums are prohibited.

§ 553.36 Permission to construct private headstones.

(a) Headstone firms must receive permission from the Superintendent, Arlington National Cemetery, to construct a private headstone for use on Arlington National Cemetery or add an inscription to an existing headstone on Arlington National Cemetery.

(b) Requests for permission should be submitted to the Superintendent, Arlington National Cemetery, and must include:

(1) Written consent from the primary next of kin;

(2) Contact information for both the primary next of kin and headstone firm; and

(3) A scale drawing (no less than 1″ = 1′) showing all dimensions, or a reproduction showing detailed specifications, of design, proposed construction material, finishing, carving, lettering, exact inscription to appear on the headstone or marker, and a trademark or copyright designation.

(c) The Department of the Army does not endorse headstone firms, but grants permission for the construction of headstones in individual cases.

(d) When using sandblast equipment to add an inscription to an existing headstone, headstone firms shall restore the surrounding grounds to the condition of the grounds before work began and at no expense to the government.

§ 553.37 Inscriptions on private headstones.

(a) An appropriate inscription for the decedent will be placed on the headstone in accordance with the dimensions of the stone and arranged in such a manner as to enhance the appearance of the stone. Additional inscriptions may be inscribed following each succeeding interment in the gravesite.

(b) All lettering must be properly proportioned and spaced, cut in such a way as to ensure permanency and legibility and be of first-class workmanship. While both hand-carved lettering and sandblast lettering are permitted, the type used must conform to that shown in the copy of the approved design.

(c) Inscriptions will generally be either V or U sunk. Raised carving or lettering may be used if placed within a sunken panel, so that the outer face of the lettering or carving does not extend beyond the surface of the die. A ''panel'' is a flat section with a raised carving (decorative elements, insignia, and lettering), surrounded by a solid border of edging (which may or may not be the face of the headstone). A border of edging must be at least 1″ in width, projecting from its field at least to the extent of the maximum projection of the carving.

(1) V-sunk letters will be cut so that the sides of the V are straight, preferably at 60 degrees to the face of the stone.

(2) Any subsequent inscription must be of the same type as the original inscription.

(3) Only black lithochrome, or gold on Medal of Honor headstones, will be used on inscriptions or carvings. No artificial coloring, pigment, pencil, milk, or other foreign substance may be used on inscriptions or carvings.

(d) Requirements for Inscriptions.

(1) The following elements of inscriptions are mandatory:

(i) For all primary eligibles: Name, rank (granted pursuant to Title 10, U.S. Code), organization or component, and date of death. This inscription must be placed on the front face of the headstone. Only the decedent's information may be inscribed on the headstone. The inscription for a nonservice-connected person will not be permitted prior to the interment.

(ii) For other eligible persons interred in the same gravesite as a primary eligible: Name, relationship to the primary eligible, and date of death. Inscriptions pertaining to eligible family members may be placed on the front of the headstone below that of the service member, or they may be placed on the rear or on the side.

(iii) In those cases where the service-connected family member and spouse are to be interred in the same grave and a private headstone is erected prior to the death of the service member, the service member's name must appear on the front face of the headstone with sufficient space reserved for the additional inscription.

(iv) The grave number (lot number) must be inscribed in the lower right-hand corner of the rear of the headstone. The height of the numbers will be ⅝ of an inch.

(2) The following elements of inscription are optional and may be placed on the front, rear, or on the sides:

(i) For the service member only: Any military decorations or military honors which have been awarded and any insignia of a military nature. A copy of a military discharge or other military document which proves receipt of the award or honor must be furnished to the Superintendent, Arlington National Cemetery.

(ii) For any decedent:

(A) A direct religious, philosophical, or classical quotation, not to exceed two lines, may be inscribed in English. The source of all quotations must be furnished to the Superintendent, Arlington National Cemetery, but only the source of a quote from the Bible or similar religious text may be inscribed on the headstone;

(B) Dates of birth;

(C) Places of birth and death;

(D) Terms of endearment to identify a relationship, e.g., Beloved Father, Loving Mother.

(3) The following optional elements may be placed on the rear or on the sides:

(i) Official titles held in civilian life;

(ii) Insignia of fraternities and societies, as long as they are not considered derogatory, demeaning, or unrelated to the decedent; they would not bring embarrassment to anyone; or they would not bring discredit to the United States.

(4) The following optional elements shall be permitted on the rear of the headstone only:

(i) Family name;

(ii) Trademarks or copyright designations, placed in the lower left-hand corner of the rear face of the die, not more than six inches above the base line or above ground level in case of one-piece headstones. The symbol may be incised in the headstone or a non-staining metal piece inserted flush with the surface of the headstone. The symbol will not exceed 1¼ inches at its greatest dimension.

(iii) Names of other family members who are authorized a memorial marker in accordance with § 553.20 and do not have a memorial marker elsewhere on Arlington National Cemetery or any other cemetery. The words ''In Memoriam'' or ''In Memory Of'' are mandatory elements of these inscriptions.

(5) The following inscriptions are prohibited:

(i) Names of living persons;

(ii) Names of other family members who are not interred at a gravesite and who are not authorized a memorial marker in accordance with these regulations; and

(iii) The name of a purchaser or erector of a marker or headstone.

§ 553.38 Memorial and commemorative monuments (other than private headstones or markers).

(a) Monuments to memorialize or commemorate an individual, group, or event may be erected on Arlington National Cemetery, or land designated to be transferred to Arlington National Cemetery, following joint or concurrent resolution of the Congress.

(b) Future monuments that are authorized for placement in Arlington National Cemetery should be memorial monuments of preeminent historical and lasting significance to the United States and contain remains or mark the location of remains in close proximity.

(c) Commemorative monuments dedicated to events in history, individuals or units of the armed forces are limited due to limited burial space. Land use for commemorative monuments comes at the expense of future interments of members of the armed forces.

(d) All designs of monuments must be approved by the Commission of Fine Arts, in accordance with 40 U.S.C. 9102.

§ 553.39 Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups, and organizations.

(a) Tributes include plaques, medals, and statues and will only be displayed in the Memorial Display Room at the Arlington National Cemetery Amphitheater. Tributes will not be affixed to Cemetery property, such as trees or donated items.

(b) Tributes may be offered by:

(1) Veterans' organizations (e.g., those listed in the Directory of Veterans Service Organizations, those recognized by the Department of Veterans Affairs for each State, or those substantially similar in nature), but not including their subdivisions, may offer tributes for display at Arlington National Cemetery.

(2) Foreign dignitaries may present tributes as part of an official ceremony.

(3) Tributes will not be accepted from individuals.

(c) Design requirements:

(1) The design of the tribute must be artistically proportioned and appropriately honor heroic military service or distinguished, notable, or patriotic civilian service, as determined by the Superintendent, Arlington National Cemetery.

(2) The material and workmanship of the tribute must be of the highest quality and free of flaws and imperfections, as determined by the Superintendent, Arlington National Cemetery.

(3) The surface area of the tribute, including the mounting, must not exceed 36 square inches; and the thickness or height must not exceed 2 inches when mounted.

(4) Tributes to the Unknowns must include, either in the basic design or on a small plate affixed thereto, a clear indication of such commemoration. Some examples follow:

(i) In Memory of the American Heroes Known but to God.

(ii) The American Unknowns.

(iii) The Unknown American Heroes.

(iv) The Unknown Soldier.

(v) The Unknown of World War II.

(vi) The Unknown of the Korean War.

(vii) The Unknown American of World War II.

(viii) The Unknown American of the Korean War.

(d) Donated items that comply with this section may be accepted and placed to honor the memory of a person or persons interred in Arlington National Cemetery or those dying in the military service of the United States or its allies. This provision is subject to the Superintendent of Arlington National Cemetery's approval, Army regulations, and current cemetery policy.

(e) Only one tribute will be accepted and displayed from an organization. If an organization would like to present an updated tribute, the old tribute will be returned to the organization. The organization will then forward the new tribute to the Superintendent, Arlington National Cemetery, for inspection prior to acceptance. If the tribute is approved by the Superintendent, Arlington National Cemetery, and a presentation ceremony is not desired, the Superintendent will inform the sponsoring organization of the tribute's placement in the Memorial Display Room. If the tribute is approved, the sponsoring organization may arrange an appropriate presentation ceremony with Arlington National Cemetery.

§ 553.40 Requests to conduct memorial services and ceremonies.

(a) Requests by members of the public to conduct memorial services or ceremonies, except for private memorial services, shall be submitted to the Superintendent, Arlington National Cemetery, and include a description of the proposed memorial service, including:

(1) The type of service;

(2) The proposed location;

(3) The name of the individual or organization sponsoring the service;

(4) The names of all key individuals participating in the service;

(5) The estimated number of persons expected to attend the service;

(6) The expected length of the service;

(7) The service's format and content;

(8) Whether permission is requested to use audio devices without headphones, musical instruments, a loudspeaker system, or a flag during the service, and if so, the number, type, and how they are planned to be used; and

(9) Whether military support is requested.

(b) Individuals and organizations sponsoring a memorial service or ceremony shall provide written assurance that the service or ceremony is not partisan in nature, as defined in § 553.1, and that they and their members will obey these rules at all times while in Arlington National Cemetery.

(c) Requests to conduct official ceremonies shall be submitted to the Commander, U.S. Army Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319–6060.

(d) Private memorial services, memorial services or ceremonies may be conducted only after permission has been received from the Superintendent, Arlington National Cemetery. Memorial services and ceremonies may be conducted only in the following designated areas:

(1) Private memorial services may be conducted only at the gravesite of a relative or former acquaintance.

(2) After receiving permission from the Superintendent, public memorial services may be conducted at the Arlington Memorial Amphitheater, the Confederate Memorial, the John F. Kennedy Grave, or other sites designated by the Superintendent, Arlington National Cemetery.

(3) Public wreath-laying ceremonies may be conducted at the Tomb of the Unknowns.

(4) Official ceremonies may be conducted at sites designated by the Superintendent, Arlington National Cemetery.

(e) The wreath or memento must first be approved by the Superintendent, Arlington National Cemetery.

§ 553.41 Conduct of memorial services and ceremonies.

(a) Superintendent, Arlington National Cemetery, will ensure the sanctity of public and private ceremonial events.

(b) All memorial services and ceremonies within Arlington National Cemetery, other than official ceremonies, shall be conducted in accordance with the following:

(1) Memorial services and ceremonies shall be purely memorial in purpose and may be dedicated only to:

(i) The memory of all those interred, inurned, or memorialized in Arlington National Cemetery;

(ii) The memory of all those dying in the military service of the United States while serving during a particular conflict or while serving in a particular military unit or units; or

(iii) The memory of the individual or individuals to be interred, inurned, or memorialized at the particular site at which the service or ceremony is held.

(2) [Reserved]

(c) Memorial services and ceremonies at Arlington National Cemetery will not be partisan in nature. Partisan activities are inappropriate in Arlington National Cemetery due to the Cemetery's role as a National shrine to all the honored dead of the Armed Forces of the United States and out of respect for the individuals buried there and for their families.

(d) Participants in public memorial services at the John F. Kennedy Grave and public wreath-laying ceremonies shall remain silent during the ceremony.

(e) Public memorial services and public wreath-laying ceremonies shall be open to all members of the public to observe.

(f) Participants in public wreath-laying ceremonies shall follow all instructions of the Tomb Guards and the Superintendent, Arlington National Cemetery, and Commanding General, Military District of Washington, as appropriate, relating to their conduct of the ceremony.

(g) Personal appearance and dress of persons participating in ceremonies at the Tomb of the Unknowns shall adhere to the dress standards expected of such dignified occasions. The Superintendent, Arlington National Cemetery, or designated representative; the Sergeant of the Guard; and Relief Commanders have the authority to prohibit a person in non-appropriate attire from participating in a wreath ceremony at the Tomb of the Unknowns. At a minimum, the following dress code shall be followed:

(1) Male: A collared shirt, casual slacks, and appropriate shoes.

(2) Female: A blouse, casual slacks, skirt or dress, appropriate shoes.

(3) Inappropriate attire for participation in ceremonies includes, but is not limited to, blue jeans, patched pants, shorts of any kind (except when part of an established uniform, e.g. Scout Uniforms, Foreign Military Uniforms, and period Military Uniforms), tank tops, halter tops, tee shirts, shower-type shoes, tube tops, and shirts that expose the midriff.

§ 553.42 Visitors rules for Arlington National Cemetery.

(a) *Visitors hours.* Visitors hours shall be established by the Superintendent, Arlington National Cemetery, and posted in conspicuous places. Unless otherwise posted or announced by the Superintendent, Arlington National Cemetery, visitors will be admitted every day during the following hours:

(1) October through March: Open 8 a.m.–Close 5 p.m.

(2) April through September: Open 8 a.m.–Close 7 p.m.

(3) No visitor is permitted to enter or remain in Arlington National Cemetery beyond the time established by the applicable visitors' hours.

(b) *Destruction or removal of property.* No person shall destroy, damage, mutilate, alter, or remove any monument, gravestone, structure, tree, shrub, plant, or other property located within Arlington National Cemetery.

(c) *Conduct within Arlington National Cemetery.* Arlington National Cemetery is a shrine to the honored dead of the Armed Forces of the United States and certain acts, appropriate elsewhere, are not appropriate in Arlington National Cemetery. All visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while in Arlington National Cemetery. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within Arlington National Cemetery, except private memorial services, without the prior approval of the Superintendent, Arlington National Cemetery, or designated representative.

(2) Engage in any picketing, demonstration, or similar conduct in Arlington National Cemetery. 38 U.S.C. 2413, and 18 U.S.C. 1387 provide basic statutory authority with regard to prohibition of certain demonstrations at or within 300 feet of Arlington National Cemetery and penalty for violation of prohibition.

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless such actions are part of a memorial service or ceremony authorized by the Superintendent, Arlington National Cemetery.

(4) Display any placards, banners, flags, or similar devices within Arlington National Cemetery, unless first approved by the Superintendent, Arlington National Cemetery, for use in an authorized memorial service or ceremony.

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within Arlington National Cemetery, except for a program approved by the Superintendent, Arlington National Cemetery, to provide to attendees of an authorized memorial service or ceremony.

(6) Allow any dog, cat, or other pet to run loose within Arlington National Cemetery.

(7) Use the cemetery grounds for recreational activities (e.g., sports or picnics).

(8) Ride a bicycle in Arlington National Cemetery, except with a proper pass issued by the Superintendent, Arlington National Cemetery, to visit a loved ones' gravesite or niche. Bicycle racks are provided at the Visitors' Center for all other bicycle traffic. An individual visiting a relative's gravesite or niche may be issued a temporary pass by the Superintendent, Arlington National Cemetery, to proceed directly to and from the gravesite or niche by bicycle.

(9) Operate an audio device (such as a radio or compact disc player) without using a headset, play a musical instrument, or use a loudspeaker within Arlington National Cemetery. The Superintendent, Arlington National Cemetery, may allow such use during an authorized memorial service or ceremony.

(10) Drive any motor vehicle within Arlington National Cemetery in excess of the posted speed limits, or in excess of 20 miles per hour if no speed limit is posted.

(11) Park any motor vehicles in any area of Arlington National Cemetery designated as a no-parking area.

(12) Leave any vehicle in the Visitors' Center parking area or anywhere else in Arlington National Cemetery after closing hours.

(13) Engage in any disorderly conduct within Arlington National Cemetery. Disorderly conduct includes, but is not limited to:

(i) Causing a public inconvenience, annoyance, or alarm.

(ii) Engaging in, promoting, instigating, encouraging, threatening, aiding, or abetting violent or tumultuous behavior or fights.

(iii) Yelling, uttering loud and boisterous language, or making other unreasonably loud noise.

(iv) Interrupting or disturbing a memorial service or ceremony.

(v) Uttering to any person abusive, insulting, profane, indecent, or otherwise provocative language or gesture that, by its very utterance, tends to incite an immediate breach of the peace.

(vi) Obstructing movement on the streets, sidewalks, or pathways of Arlington National Cemetery without prior authorization by appropriate Cemetery authorities.

(vii) Disobeying a request or order by the Superintendent, Arlington National Cemetery; U.S. Park Police; or other

appropriate authority to disperse or leave Arlington National Cemetery.

(viii) Creating a hazardous or physically offensive condition.

(d) *Vehicular traffic.* All visitors, including persons attending or taking part in memorial services and ceremonies, will observe the following rules concerning motor vehicle traffic within Arlington National Cemetery:

(1) Visitors not entitled to a vehicle pass are required to park their vehicles in the Visitors' Center parking area.

(2) Only the following categories of vehicles will be permitted access to Arlington National Cemetery roadways and issued a permanent or temporary pass from the Superintendent of Arlington National Cemetery:

(i) Official Federal Government vehicles having official Federal Government business.

(ii) Vehicles carrying persons on official cemetery business.

(iii) Vehicles forming part of an authorized funeral procession.

(iv) Vehicles carrying persons visiting the Arlington National Cemetery gravesites of relatives or loved ones interred, inurned, or memorialized within Arlington National Cemetery.

(v) Arlington National Cemetery and National Park Service (NPS) maintenance vehicles.

(vi) Vehicles of contractors who are authorized to perform work within Arlington National Cemetery.

(vii) Concessionaire tour buses authorized by the Superintendent, Arlington National Cemetery or designated representative, to operate in Arlington National Cemetery.

§ 553.43 Soliciting and vending.

The display or distribution of commercial advertising or solicitation of business to the public is strictly prohibited within Arlington National Cemetery, except for the Visitors' Center Book Store and authorized mobile tour operations.

§ 553.44 Media.

(a) *General rules for media.* (1) Media operations and policies will aim to consistently achieve the appropriate balance of the media and the privacy considerations of family members.

(2) Media will not use Arlington National Cemetery for any partisan activity, as defined in § 553.1.

(3) All media entering Arlington National Cemetery must be authorized by the Superintendent, Arlington National Cemetery or designated representative. Media will receive a briefing about the general media guidelines before the Superintendent, Arlington National Cemetery, or designated representative authorizes their media presence.

(4) If approval to film or photograph in the cemetery is denied, media may not use other measures to gain entrance to the cemetery for those purposes. Furthermore, attempts to disrupt or interfere in private, public or official ceremonies will result in immediate removal from the cemetery.

(5) All media attending a funeral or service will be escorted by a designated cemetery representative at all times while within the boundaries of the cemetery.

(6) The decedent's primary next of kin must agree to the presence of the media before media presence is allowed to attend a funeral or private memorial service.

(7) *Dress Code.* All media are required to dress appropriately for public and private ceremonies, service, and funerals. Apparel must be similar to that worn by the mourners, e.g., collared shirts and trousers. Headgear will be removed as appropriate during ceremonies, services, and funerals (e.g., civilians should remove their headgear during the playing of the National Anthem or Taps). No food, drink, or smoking is permitted.

(8) All electronic communication devices, including cell phones, must be turned off or to a silent mode.

(9) Remotely placed microphones are not authorized for use at Arlington National Cemetery.

(b) *Interview rules.* (1) All interviews must be pre-coordinated with Arlington National Cemetery. No interviews are authorized unless approved by the Superintendent, Arlington National Cemetery or designated representative.

(2) No interviews of attendees of funerals or private memorial services are authorized on Arlington National Cemetery. Such interviews may be conducted outside of Arlington National Cemetery.

(3) Interviews are prohibited at the following locations:

(i) Tomb of the Unknown Soldier;

(ii) Any of the Kennedy family gravesites, including the gravesites of President John F. Kennedy and Robert F. Kennedy, located in Section 45.

(c) *Rules for live television coverage.* (1) Live television coverage must be authorized by the Superintendent, Arlington National Cemetery.

(2) Live television coverage at remote sites in the cemetery shall be confined to subjects relevant to the cemetery (e.g., Veterans Day, Memorial Day). Other coverage must be broadcasted from the network location.

(3) All media outlets going live at official ceremonies shall be located at the cemetery's designated locations. Exceptions may be granted for a media pool camera. If an exception is granted, pool video footage shall be shared with other media covering the event.

(d) *Rules for filming.* (1) All requests by the television and motion picture industries to film at Arlington National Cemetery shall be submitted to the Superintendent, Arlington National Cemetery, for approval or disapproval by the Superintendent, the Office of the Chief of Public Affairs—Los Angeles, and the Department of Defense.

(2) Approval will be based on the following:

(i) The subject matter shall be factual and historically accurate, or represent a feasible interpretation of military life, operations, and policies.

(ii) The project should further the public's understanding of the United States Armed Forces.

(iii) The project should enhance recruiting and retention efforts of the United States Armed Forces.

(iv) The project shall not appear to condone or endorse activities which are contrary to United States government policy.

§ 553.45 Videography.

(a) Videographers are prohibited from soliciting at Arlington National Cemetery.

(b) *Dress Code.* All videographers and their assistants shall dress appropriately for private and public ceremonies, memorial services, and funerals. Their apparel shall be similar to that worn by the mourners, e.g., collared shirts and trousers. Hats will be removed as appropriate during ceremonies, services, and funerals (e.g., during the playing of Taps). No food, drink, smoking or cell phones are permitted in the press areas.

(c) Videographers shall not interfere with private and public ceremonies, services and funerals and will be located with media outlets, as appropriate. Attempts to disrupt or interfere with private or public ceremonies will result in immediate removal from the cemetery.

(d) Microphones will not be used at the gravesites.

(e) Approval from the decedent's family must be obtained before releasing any footage to anyone other than the family.

(f) Filming in the Administration Building at Arlington National Cemetery is prohibited.

(g) The hiring of a videographer is a private agreement between the decedent's family and the videography company. As such, Arlington National Cemetery shall not solicit videographers nor involve itself with any contract

disputes between the decedent's family and the videographer or videography company.

§ 553.46 Penalties.

Any person or entity that violates the provisions of this regulation may be barred from entering the cemetery, including participating in memorial services and ceremonies within the cemetery, for two (2) years from the date of such violation. Individuals may also be subject to the penalties set out in Title 36 Code of Federal Regulations, Chapter 1, Section 1.5(f).

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. 2006–3 CRB DPRA]

Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the use of musical works in limited downloads, interactive streaming and incidental digital phonorecord deliveries.

DATES: Comments and objections, if any, are due no later than October 31, 2008.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, also known as the mechanical compulsory license, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (''DPRSRA''), Public Law No. 104–39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. 17 U.S.C. 115(c)(3). Consequently, the license now covers digital transmissions of phonorecords in addition to the physical copies such as compact discs, vinyl and cassette tapes.

Until it was abolished in 1993, the Copyright Royalty Tribunal (''CRT'') had authority to adjust the statutory rates for the making and distributing of physical phonorecords and did so in 1987. *See* 1987 Adjustment of the Mechanical Royalty Rate, Docket No. CRT 87–3–87 MRA, 52 FR 22637 (June 15, 1987). In 1993, Congress replaced the CRT with a system under which the mechanical royalty rate was determined by Copyright Arbitration Royalty Panels (''CARP'') under the supervision of the Librarian of Congress. *See* Copyright Royalty Tribunal Reform Act of 1993, Public Law No. 103–198, 107 Stat. 2304. Unlike the CRT, the CARPs were authorized to adopt terms, in addition to setting the rates, for the mechanical license. The rates and terms for the mechanical license were adjusted periodically under the CARP system and appear in 37 CFR Part 255. However, in the Copyright Royalty and Distribution Reform Act of 2004, Public Law No. 108–419, Congress transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (''Judges''). 17 U.S.C. 801(b)(1).

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Judges published a notice in the **Federal Register** announcing the commencement of the proceeding to determine rates and terms for the compulsory license under section 115 and requesting interested parties to submit their petitions to participate. Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords, Docket No. 2006–3 CRB DPRA, 71 FR 1454 (January 9, 2006). Petitions to participate were received from the following entities: Royalty Logic, Inc; the Songwriters Guild of America; the National Music Publishers' Association, Inc., the Songwriters Guild of America, and the Nashville Songwriters Association International, jointly (collectively, ''Copyright Owners''); Apple Computer, Inc.; America Online, Inc.; RealNetworks, Inc.; Napster, LLC; Sony Connect, Inc.; Digital Media Association (''DiMA''); Yahoo! Inc.; MusicNet, Inc.; MTV Networks, Inc.; and Recording Industry Association of America (''RIAA'').

The Judges set the schedule for the proceeding for both the direct and rebuttal phases of the proceeding, including the dates for the filing of written statements and the dates for oral testimony for each phase. During the oral presentation of the rebuttal phase, the parties informed the Judges that they had reached a settlement regarding the rates and terms for ''limited downloads and interactive streaming, including all known incidental digital phonorecord deliveries.'' *See* Joint Motion to Adopt Procedures for Submission of Partial Settlement at 1 (filed May 15, 2008). The proposed rates and terms codifying the settlement agreement were filed on September 22, 2008.[1]

Section 801(b)(7) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides that in such event:

[1] The parties were unable to reach agreement regarding the rates and terms for the use of musical works in the making and distributing of physical phonorecords, permanent digital downloads, and ringtones. Consequently, the rates and terms for these products were the subject of a full hearing before the Judges. The Judges will determine these rates and terms, and those rates and terms also will be contained in proposed Part 385 of title 37 of the Code of Federal Regulations. Today's notice of proposed rulemaking discusses only the proposed regulations regarding limited downloads, interactive streaming and incidental digital phonorecord deliveries.

(i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of musical works and those using such musical works in limited downloads, interactive streaming and incidental digital phonorecord deliveries.

As part of this notice of proposed rulemaking, the Judges are modifying one aspect of the proposed rates and terms. The parties have included language in their proposal that states that such rates have no precedential effect and may not be introduced or relied upon in any governmental or judicial proceeding. The Judges decline to include such language within our regulations. Our task, as set forth in section 115 and chapter 8 of the Copyright Act, is to adopt rates and terms for the compulsory license for the making and distributing of physical and digital phonorecords. It is not our task to offer evaluations, limitations or characterizations of the rates and terms, or make statements about their use or value in proceedings other than this one. *See* Noncommercial Educational Broadcasting Statutory License, Docket No. 2006–2 CRB NCBRA, 72 FR 19138, 19139 (April 17, 2007).

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add Part 385 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS

Subpart A—[Reserved]

Subpart B—Interactive Streaming, Other Incidental Digital Phonorecord Deliveries and Limited Downloads

Sec.
385.10 General.
385.11 Definitions.
385.12 Calculation of royalty payments in general.
385.13 Minimum royalty rates and subscriber-based royalty floors for specific types of services.
385.14 Promotional royalty rate.
385.15 Timing of payments.
385.16 Reproduction and distribution rights covered.
385.17 Effect of rates.

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

§ 385.10 General.

(a) This subpart establishes rates and terms of royalty payments for interactive streams and limited downloads of musical works by subscription and nonsubscription digital music services in accordance with the provisions of 17 U.S.C. 115.

(b) *Legal compliance.* A licensee that makes or authorizes interactive streams or limited downloads of musical works through subscription or nonsubscription digital music services pursuant to 17 U.S.C. 115 shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations.

§ 385.11 Definitions.

For purposes of this subpart, the following definitions shall apply:

Interactive stream means a stream of a sound recording of a musical work, where the performance of the sound recording by means of the stream is not exempt under 17 U.S.C. 114(d)(1) and does not in itself or as a result of a program in which it is included qualify for statutory licensing under 17 U.S.C. 114(d)(2). An interactive stream is an incidental digital phonorecord delivery under 17 U.S.C. 115(c)(3)(C) and (D).

Licensee means a person that has obtained a compulsory license under 17 U.S.C. 115 and its implementing regulations.

Licensed activity means interactive streams or limited downloads of musical works, as applicable.

Limited download means a digital transmission of a sound recording of a musical work to an end user, other than a stream, that results in a specifically identifiable reproduction of that sound recording that is only accessible for listening for—

(1) An amount of time not to exceed 1 month from the time of the transmission (unless the service, in lieu of retransmitting the same sound recording as another limited download, separately and upon specific request of the end user made through a live network connection, reauthorizes use for another time period not to exceed 1 month), or in the case of a subscription transmission, a period of time following the end of the applicable subscription no longer than a subscription renewal period or 3 months, whichever is shorter; or

(2) A specified number of times not to exceed 12 (unless the service, in lieu of retransmitting the same sound recording as another limited download, separately and upon specific request of the end user made through a live network connection, reauthorizes use of another series of 12 or fewer plays), or in the case of a subscription transmission, 12 times after the end of the applicable subscription.

(3) A limited download is a general digital phonorecord delivery under 17 U.S.C. 115(c)(3)(C) and (D).

Offering means a service's offering of licensed activity that is subject to a particular rate set forth in § 385.13(a) (e.g., a particular subscription plan available through the service).

Promotional royalty rate means the statutory royalty rate of zero in the case of certain promotional interactive streams and certain promotional limited downloads, as provided in § 385.14.

Publication date means [date regulations adopted as final].

Record company means a person or entity that

(1) Is a copyright owner of a sound recording of a musical work;

(2) In the case of a sound recording of a musical work fixed before February 15, 1972, has rights to the sound recording, under the common law or statutes of any State, that are equivalent to the rights of a copyright owner of a sound recording of a musical work under title 17, United States Code;

(3) Is an exclusive licensee of the rights to reproduce and distribute a sound recording of a musical work; or

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of the copyright owner of the sound recording.

Relevant page means a page (including a web page, screen or display) from which licensed activity offered by a service is directly available

to end users, but only where the offering of licensed activity and content that directly relates to the offering of licensed activity (e.g., an image of the artist or artwork closely associated with such offering, artist or album information, reviews of such offering, credits and music player controls) comprises 75% or more of the space on that page, excluding any space occupied by advertising. A licensed activity is directly available to end users from a page if sound recordings of musical works can be accessed by end users for limited downloads or interactive streams from such page (in most cases this will be the page where the limited download or interactive stream takes place).

Service means that entity (which may or may not be the licensee) that, with respect to the licensed activity,

(1) Contracts with or has a direct relationship with end users in a case where a contract or relationship exists, or otherwise controls the content made available to end users;

(2) Is able to report fully on service revenue from the provision of the licensed activity to the public, and to the extent applicable, verify service revenue through an audit; and

(3) Is able to report fully on usage of musical works by the service, or procure such reporting, and to the extent applicable, verify usage through an audit.

Service revenue. (1) Subject to paragraphs (2) through (5) of the definition of ''Service revenue,'' and subject to U.S. Generally Accepted Accounting Principles, *service revenue* shall mean the following:

(i) All revenue recognized by the service from end users from the provision of licensed activity;

(ii) All revenue recognized by the service by way of sponsorship and commissions as a result of the inclusion of third-party ''in-stream'' or ''in-download'' advertising as part of licensed activity (i.e., advertising placed immediately at the start, end or during the actual delivery, by way of interactive streaming or limited downloads, as applicable, of a musical work); and

(iii) All revenue recognized by the service, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a relevant page of the service or on any page that directly follows such relevant page leading up to and including the limited download or interactive streaming, as applicable, of a musical work; provided that, in the case where more than one service is actually available to end users from a relevant page, any advertising revenue shall be allocated between such services on the basis of the relative amounts of the page they occupy.

(2) In each of the cases identified in paragraph (1) of the definition of ''Service revenue,'' such revenue shall, for the avoidance of doubt,

(i) Include any such revenue recognized by the service, or if not recognized by the service, by any associate, affiliate, agent or representative of such service in lieu of its being recognized by the service;

(ii) Include the value of any barter or other nonmonetary consideration;

(iii) Not be reduced by credit card commissions or similar payment process charges; and

(iv) Except as expressly set forth in this subpart, not be subject to any other deduction or set-off other than refunds to end users for licensed activity that they were unable to use due to technical faults in the licensed activity or other bona fide refunds or credits issued to end users in the ordinary course of business.

(3) In each of the cases identified in paragraph (1) of the definition of ''Service revenue,'' such revenue shall, for the avoidance of doubt, exclude revenue derived solely in connection with services and activities other than licensed activity, provided that advertising or sponsorship revenue shall be treated as provided in paragraphs (2) and (4) of the definition of ''Service revenue.'' By way of example, the following kinds of revenue shall be excluded:

(i) Revenue derived from non-music voice, content and text services;

(ii) Revenue derived from other non-music products and services (including search services, sponsored searches and click-through commissions); and

(iii) Revenue derived from music or music-related products and services that are not or do not include licensed activity.

(4) For purposes of paragraph (1) of the definition of ''Service revenue,'' advertising or sponsorship revenue shall be reduced by the actual cost of obtaining such revenue, not to exceed 15%.

(5) Where the licensed activity is provided to end users as part of the same transaction with one or more other products or services that are not a music service engaged in licensed activity, then the revenue deemed to be recognized from end users for the service for the purpose of the definition in paragraph (1) of the definition of ''Service revenue'' shall be the revenue recognized from end users for the bundle less the standalone published price for end users for each of the other component(s) of the bundle; provided that, if there is no such standalone published price for a component of the bundle, then the average standalone published price for end users for the most closely comparable product or service in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used. In connection with such a bundle, if a record company providing sound recording rights to the service

(i) Recognizes revenue (in accordance with U.S. Generally Accepted Accounting Principles, and including for the avoidance of doubt barter or nonmonetary consideration) from a person or entity other than the service providing the licensed activity and;

(ii) Such revenue is received, in the context of the transactions involved, as consideration for the ability to make interactive streams or limited downloads of sound recordings, then such revenue shall be added to the amounts expensed by the service for purposes of § 385.13(b). Where the service is the licensee, if the service provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service hereunder as a result of revenue recognized from a person or entity other than the service as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service to calculate the additional royalties and indemnify the service for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.

Stream means the digital transmission of a sound recording of a musical work to an end user—

(1) To allow the end user to listen to the sound recording, while maintaining a live network connection to the transmitting service, substantially at the time of transmission, except to the extent that the sound recording remains accessible for future listening from a streaming cache reproduction;

(2) Using technology that is designed such that the sound recording does not remain accessible for future listening, except to the extent that the sound recording remains accessible for future listening from a streaming cache reproduction; and

(3) That is also subject to licensing as a public performance of the musical work.

Streaming cache reproduction means a reproduction of a sound recording of a musical work made on a computer or other receiving device by a service solely for the purpose of permitting an end user who has previously received a stream of such sound recording to play such sound recording again from local storage on such computer or other device rather than by means of a transmission; provided that the user is only able to do so while maintaining a live network connection to the service, and such reproduction is encrypted or otherwise protected consistent with prevailing industry standards to prevent it from being played in any other manner or on any device other than the computer or other device on which it was originally made.

Subscription service means a digital music service for which end users are required to pay a fee to access the service for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether such payment is made for access to the service on a standalone basis or as part of a bundle with one or more other products or services, and including any use of such a service on a trial basis without charge as described in § 385.14(b).

§ 385.12 Calculation of royalty payments in general.

(a) *Applicable royalty.* Licensees that make or authorize licensed activity pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section, subject to the minimum royalties and subscriber-based royalty floors for specific types of services provided in § 385.13, except as provided for certain promotional uses in § 385.14.

(b) *Rate calculation methodology.* Royalty payments for licensed activity shall be calculated as provided in paragraph (b) of this section. If a service includes different offerings, royalties must be separately calculated with respect to each such offering. Uses subject to the promotional royalty rate shall be excluded from the calculation of royalties due, as further described in this section and the following § 385.13.

(1) *Step 1:* Calculate the All-In Royalty for the Service. For each accounting period, the all-in royalty for each offering of the service is the greater of

(i) The applicable percentage of service revenue as set forth in paragraph (c) of this section (excluding any service revenue derived solely from licensed activity uses subject to the promotional royalty rate), and

(ii) The minimum specified in § 385.13 of the offering involved.

(2) *Step 2:* Subtract Applicable Performance Royalties. From the amount determined in step 1 in paragraph (b)(1) of this section, for each offering of the service, subtract the total amount of royalties for public performance of musical works that has been or will be expensed by the service pursuant to public performance licenses in connection with uses of musical works through such offering during the accounting period that constitute licensed activity (other than licensed activity subject to the promotional royalty rate). While this amount may be the total of the service's payments for that offering for the accounting period under its agreements with performing rights societies as defined in 17 U.S.C. 101, it will be less than the total of such public performance payments if the service is also engaging in public performance of musical works that does not constitute licensed activity. In the latter case, the amount to be subtracted for public performance payments shall be the amount of such payments allocable to licensed activity uses (other than promotional royalty rate uses) through the relevant offering, as determined in relation to all uses of musical works for which the public performance payments are made for the accounting period. Such allocation shall be made on the basis of plays of musical works or, where per-play information is unavailable due to bona fide technical limitations as described in step 4 in paragraph (b)(4) of this section, using the same alternative methodology as provided in step 4.

(3) *Step 3:* Determine the Payable Royalty Pool. This is the amount payable for the reproduction and distribution of all musical works used by the service by virtue of its licensed activity for a particular offering during the accounting period. This amount is the greater of

(i) The result determined in step 2 in paragraph (b)(2) of this section, and

(ii) The subscriber-based royalty floor resulting from the calculations described in § 385.13.

(4) *Step 4:* Calculate the Per-Work Royalty Allocation for Each Relevant Work. This is the amount payable for the reproduction and distribution of each musical work used by the service by virtue of its licensed activity through a particular offering during the accounting period. To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the offering. The allocation shall be accomplished by dividing the payable royalty pool determined in step 3 for such offering by the total number of plays of all musical works through such offering during the accounting period (other than promotional royalty rate plays) to yield a per-play allocation, and multiplying that result by the number of plays of each musical work (other than promotional royalty rate plays) through the offering during the accounting period. For purposes of determining the per-work royalty allocation in all calculations under this step 4 only (i.e., after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each play on or after October 1, 2010 shall be counted as provided in paragraph (d) of this section. Notwithstanding the foregoing, if the service is not capable of tracking play information due to bona fide limitations of the available technology for services of that nature or of devices useable with the service, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used by the service for making royalty payment allocations for the use of individual sound recordings.

(c) *Percentage of service revenue.* The percentage of service revenue applicable under paragraph (b) of this section is 10.5%, except that such percentage shall be discounted by 2% (i.e., to 8.5%) in the case of licensed activity occurring on or before December 31, 2007.

(d) *Overtime adjustment.* For licensed activity on or after October 1, 2010, for purposes of the calculations in step 4 in paragraph (b)(4) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of plays as follows:

(1) 5:01 to 6:00 minutes—Each play = 1.2 plays

(2) 6:01 to 7:00 minutes—Each play = 1.4 plays

(3) 7:01 to 8:00 minutes—Each play = 1.6 plays

(4) 8:01 to 9:00 minutes—Each play = 1.8 plays

(5) 9:01 to 10:00 minutes—Each play = 2.0 plays

(6) For playing times of greater than 10 minutes, continue to add .2 for each additional minute or fraction thereof.

(e) *Accounting.* The calculations required by paragraph (b) of this section shall be made in good faith and on the basis of the best knowledge, information and belief of the licensee at the time payment is due, and subject to the additional accounting and certification

requirements of 17 U.S.C. 115(c)(5) and § 201.19 of this title. Without limitation, a licensee's statements of account shall set forth each step of its calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how a minimum royalty or subscriber-based royalty floor pursuant to § 385.13 does or does not apply) and, for each offering reported, also indicate the type of licensed activity involved and the number of plays of each musical work (including an indication of any overtime adjustment applied) that is the basis of the per-work royalty allocation being paid.

§ 385.13 Minimum royalty rates and subscriber-based royalty floors for specific types of services.

(a) *In general.* The following minimum royalty rates and subscriber-based royalty floors shall apply to the following types of licensed activity:

(1) *Standalone non-portable subscription—streaming only.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings only in the form of interactive streams and only from a non-portable device to which such streams are originally transmitted while the device has a live network connection, the minimum for use in step 1 of § 385.12(b)(1) is the lesser of subminimum II as described in paragraph (c) of this section for the accounting period and the aggregate amount of 50 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of § 385.12(b)(1) is the aggregate amount of 15 cents per subscriber per month.

(2) *Standalone non-portable subscription—mixed.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings either in the form of interactive streams or limited downloads but only from a non-portable device to which such streams or downloads are originally transmitted, the minimum for use in step 1 of § 385.12(b)(3) is the lesser of the subminimum I as described in paragraph (b) of this section for the accounting period and the aggregate amount of 50 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of § 385.12(b)(3) is the aggregate amount of 30 cents per subscriber per month.

(3) *Standalone portable subscription service.* Except as provided in paragraph (a)(4) of this section, in the case of a subscription service through which an end user can listen to sound recordings in the form of interactive streams or limited downloads from a portable device, the minimum for use in step 1 of § 385.12(b)(1) is the lesser of subminimum I as described in paragraph (b) of this section for the accounting period and the aggregate amount of 80 cents per subscriber per month. The subscriber-based royalty floor for use in step 3 of § 385.12(b)(3) is the aggregate amount of 50 cents per subscriber per month.

(4) *Bundled subscription services.* In the case of a subscription service made available to end users with one or more other products or services as part of a single transaction without pricing for the subscription service separate from the product(s) or service(s) with which it is made available (e.g., a case in which a user can buy a portable device and one-year access to a subscription service for a single price), the minimum for use in step 1 of § 385.12(b)(1) is subminimum I as described in paragraph (b) of this section for the accounting period. The subscriber-based royalty floor for use in step 3 of § 385.12(b)(3) is the aggregate amount of 25 cents per month for each end user who has made at least one play of a licensed work during such month (each such end user to be considered an ''active subscriber'').

(5) *Free nonsubscription/ad-supported services.* In the case of a service offering licensed activity free of any charge to the end user, the minimum for use in step 1 of § 385.12(b)(1) is subminimum II described in paragraph (c) of this section for the accounting period. There is no subscriber-based royalty floor for use in step 3 of § 385.12(b)(3).

(b) *Computation of subminimum I.* For purposes of paragraphs (a)(2), (3) and (4) of this section, and with reference to paragraph (5) of the definition of ''service revenue'' in § 385.11 if applicable, subminimum I for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service during the accounting period—

(1) In cases in which a record company is the licensee under 17 U.S.C. 115 and a third-party service has obtained from the record company the rights to make interactive streams or limited downloads of a sound recording together with the right to reproduce and distribute the musical work embodied therein, 17.36% of the total amount expensed by the service in accordance with U.S. Generally Accepted Accounting Principles, which for the avoidance of doubt shall include the value of any barter or other nonmonetary consideration provided by the service, for such rights for the accounting period, except that for licensed activity occurring on or before December 31, 2007, subminimum I for an accounting period shall be 14.53% of the amount expensed by the service for such rights for the accounting period.

(2) In cases in which the relevant service is the licensee under 17 U.S.C. 115 and the relevant service has obtained from a third-party record company the rights to make interactive streams or limited downloads of a sound recording without the right to reproduce and distribute the musical work embodied therein, 21% of the total amount expensed by the service in accordance with U.S. Generally Accepted Accounting Principles, which for the avoidance of doubt shall include the value of any barter or other nonmonetary consideration provided by the service, for such sound recording rights for the accounting period, except that for licensed activity occurring on or before December 31, 2007, subminimum I for an accounting period shall be 17% of the amount expensed by the service for such sound recording rights for the accounting period.

(c) *Computation of subminimum II.* For purposes of paragraphs (a)(1) and (5) of this section, subminimum II for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used by the relevant service during the accounting period—

(1) In cases in which a record company is the licensee under 17 U.S.C. 115 and a third-party service has obtained from the record company the rights to make interactive streams and limited downloads of a sound recording together with the right to reproduce and distribute the musical work embodied therein, 18% of the total amount expensed by the service in accordance with U.S. Generally Accepted Accounting Principles, which for the avoidance of doubt shall include the value of any barter or other nonmonetary consideration provided by the service, for such rights for the accounting period, except that for licensed activity occurring on or before December 31, 2007, subminimum II for an accounting period shall be 14.53% of the amount expensed by the service for such rights for the accounting period.

(2) In cases in which the relevant service is the licensee under 17 U.S.C. 115 and the relevant service has

obtained from a third-party record company the rights to make interactive streams or limited downloads of a sound recording without the right to reproduce and distribute the musical work embodied therein, 22% of the total amount expensed by the service in accordance with U.S. Generally Accepted Accounting Principles, which for the avoidance of doubt shall include the value of any barter or other nonmonetary consideration provided by the service, for such sound recording rights for the accounting period, except that for licensed activity occurring on or before December 31, 2007, subminimum II for an accounting period shall be 17% of the amount expensed by the service for such sound recording rights for the accounting period.

(d) *Computation of subscriber-based royalty rates.* For purposes of paragraph (a) of this section, to determine the minimum or subscriber-based royalty floor, as applicable to any particular offering, the service shall for the relevant offering calculate its total number of subscriber-months for the accounting period, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the promotional royalty rate as described in § 385.14(b)(2), except that in the case of a bundled subscription service, subscriber-months shall instead be determined with respect to active subscribers as defined in paragraph (a)(4) of this section. The product of the total number of subscriber-months for the accounting period and the specified number of cents per subscriber (or active subscriber, as the case may be) shall be used as the subscriber-based component of the minimum or subscriber-based royalty floor, as applicable, for the accounting period.

§ 385.14 Promotional royalty rate.

(a) *General provisions.* (1) This section establishes a royalty rate of zero in the case of certain promotional interactive streaming activities, and of certain promotional limited downloads offered in the context of a free trial period for a digital music subscription service under a license pursuant to 17 U.S.C. 115. Subject to the requirements of 17 U.S.C. 115 and the additional provisions of paragraphs (b) through (e) of this section, the promotional royalty rate shall apply to a musical work when a record company transmits or authorizes the transmission of interactive streams or limited downloads of a sound recording that embodies such musical work, only if—

(i) The primary purpose of the record company in making or authorizing the interactive streams or limited downloads is to promote the sale or other paid use of sound recordings by the relevant artists, including such sound recording, through established retail channels or the paid use of one or more established retail music services through which the sound recording is available, and not to promote any other good or service;

(ii) Either—

(A) The sound recording (or a different version of the sound recording embodying the same musical work) is being lawfully distributed and offered to consumers through the established retail channels or services described in paragraph (a)(1)(i) of this section; or

(B) In the case of a sound recording of a musical work being prepared for commercial release but not yet released, the record company has a good faith intention of lawfully distributing and offering to consumers the sound recording (or a different version of the sound recording embodying the same musical work) through the established retail channels or services described in paragraph (a)(1)(i) of this section within 90 days after the commencement of the first promotional use authorized under this section (and in fact does so, unless it can demonstrate that notwithstanding its bona fide intention, it unexpectedly did not meet the scheduled release date);

(iii) In connection with authorizing the promotional interactive streams or limited downloads, the record company has obtained from the service it authorizes a written representation that—

(A) In the case of a promotional use commencing on or after October 1, 2010, except interactive streaming subject to paragraph (d) of this section, the service agrees to maintain for a period of no less than 5 years from the conclusion of the promotional activity complete and accurate records of the relevant authorization and dates on which the promotion was conducted, and identifying each sound recording of a musical work made available through the promotion, the licensed activity involved, and the number of plays of such recording;

(B) The service is in all material respects operating with appropriate license authority with respect to the musical works it is using for promotional and other purposes; and

(C) The representation is signed by a person authorized to make the representation on behalf of the service;

(iv) Upon receipt by the record company of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular service is in a material manner operating without appropriate license authority from such copyright owner, the record company shall within 5 business days withdraw by written notice its authorization of such uses of such copyright owner's musical works under the promotional royalty rate by that service;

(v) The interactive streams or limited downloads are offered free of any charge to the end user and, except in the case of interactive streaming subject to paragraph (d) of this section or in the case of a free trial period for a digital music subscription service, no more than 5 sound recordings at a time are streamed in response to any individual request of an end user;

(vi) The interactive streams and limited downloads are offered in a manner such that the user is at the same time (e.g., on the same web page) presented with a purchase opportunity for the relevant sound recording or an opportunity to subscribe to a paid service offering the sound recording, or a link to such a purchase or subscription opportunity, except—

(A) In the case of interactive streaming of a sound recording being prepared for commercial release but not yet released, certain mobile applications or other circumstances in which the foregoing is impracticable in view of the current state of the relevant technology; and

(B) In the case of a free trial period for a digital music subscription service, if end users are periodically offered an opportunity to subscribe to the service during such free trial period; and

(vii) The interactive streams and limited downloads are not provided in a manner that is likely to cause mistake, to confuse or to deceive, reasonable end users as to the endorsement or association of the author of the musical work with any product, service or activity other than the sale or paid use of sound recordings or paid use of a music service through which sound recordings are available. Without limiting the foregoing, upon receipt of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular use of such work under this section violates the limitation set forth in this paragraph (a)(1)(vii), the record company shall promptly cease such use of that work, and within 5 business days withdraw by written notice its authorization of such use by

all relevant third parties it has authorized under this section.

(2) To rely upon the promotional royalty rate, a record company making or authorizing interactive streams or limited downloads shall keep complete and accurate contemporaneous written records of such uses, including the sound recordings and musical works involved, the artists, the release dates of the sound recordings, a brief statement of the promotional activities authorized, the identity of the service or services where each promotion is authorized (including the internet address if applicable), the beginning and end date of each period of promotional activity authorized, and the representation required by paragraph (a)(1)(iii) of this section; provided that, in the case of trial subscription uses, such records shall instead consist of the contractual terms that bear upon promotional uses by the particular digital music subscription services it authorizes; and further provided that, if the record company itself is conducting the promotion, it shall also maintain any additional records described in paragraph (a)(1)(iii)(A) of this section. The records required by this paragraph (a)(2) shall be maintained for no less time than the record company maintains records of usage of royalty-bearing uses involving the same type of licensed activity in the ordinary course of business, but in no event for less than 5 years from the conclusion of the promotional activity to which they pertain. If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under this paragraph (a)(2) with respect to a specific promotion or relating to a particular sound recording of a musical work, the record company shall provide complete and accurate documentation within 10 business days, except for any information required under paragraph (a)(1)(iii)(A) of this section, which shall be provided within 20 business days, and provided that if the copyright owner or agent requests information concerning a large volume of promotions or sound recordings, the record company shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the record company does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the promotional royalty rate and the record company (but not any third-party service it has authorized) shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(3) If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under paragraph (a)(1)(iii)(A) of this section by a service authorized by a record company with respect to a specific promotion, the service shall provide complete and accurate documentation within 20 business days, provided that if the copyright owner or agent requests information concerning a large volume of promotions or sound recordings, the service shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the service does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the promotional royalty rate and the service (but not the record company) will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(4) The promotional royalty rate is exclusively for audio-only interactive streaming and limited downloads of musical works subject to licensing under 17 U.S.C. 115. The promotional royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the promotional royalty rate (including without limitation interactive streaming or limited downloads of a musical work beyond the time limitations applicable to the promotional royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101 *et seq.* For the avoidance of doubt, however, except as provided in paragraph (a) of this section, statements of account under 17 U.S.C. 115 need not reflect interactive streams or limited downloads subject to the promotional royalty rate.

(b) *Interactive streaming and limited downloads of full-length musical works through third-party services.* In addition to those of paragraph (a) of this section, the provisions of this paragraph (b) apply to interactive streaming, and limited downloads (in the context of a free trial period for a digital music subscription service), authorized by record companies under the promotional royalty rate through third-party services (including Web sites) that is not subject to paragraphs (c) or (d) of this section. Such interactive streams and limited downloads may be made or authorized by a record company under the promotional royalty rate only if—

(1) No cash, other monetary payment, barter or other consideration for making or authorizing the relevant interactive streams or limited downloads is received by the record company, its parent company, any entity owned in whole or in part by or under common ownership with the record company, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration used to promote the sale or paid use of sound recordings or the paid use of music services through which sound recordings are available;

(2) In the case of interactive streaming and limited downloads offered in the context of a free trial period for a digital music subscription service, the free trial period does not exceed 30 consecutive days per subscriber per two-year period; and

(3) In contexts other than a free trial period for a digital music subscription service, interactive streaming subject to paragraph (b) of this section of a particular sound recording is authorized by the record company on no more than 60 days total for all services (i.e., interactive streaming under paragraph (b) of this section of a particular sound recording may be authorized on no more than a total of 60 days, which need not be consecutive, and on any one such day, interactive streams may be offered on one or more services); provided, however, that an additional 60 days shall be available each time the sound recording is re-released by the record company in a remastered form or as a part of a compilation with a different set of sound recordings than the original release or any prior compilation including such sound recording.

(4) In the event that a record company authorizes promotional uses in excess of the time limitations of paragraph (b) of this section, the record company, and not the third-party service it has authorized, shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved. In the event that a third-party service exceeds the scope of any authorization by a record company, the service, and not the record company, shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(c) *Interactive streaming of full-length musical works through record company and artist services.* In addition to those of paragraph (a) of this section, the provisions of this paragraph (c) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate through a service (e.g., a Web site) directly owned or operated by the record company, or directly owned or operated by a recording artist under the authorization of the record company, and that is not subject to paragraph (d) of this section. For the avoidance of doubt and without limitation, an artist page or site on a third-party service (e.g., a social networking service) shall not be considered a service operated by the record company or artist. Such interactive streams may be made or authorized by a record company under the promotional royalty rate only if—

(1) The interactive streaming subject to this paragraph (c) of a particular sound recording is offered or authorized by the record company on no more than 90 days total for all services (i.e., interactive streaming under this paragraph (c) of a particular sound recording may be authorized on no more than a total of 90 days, which need not be consecutive, and on any such day, interactive streams may be offered on one or more services operated by the record company or artist, subject to the provisions of paragraph (b)(2) of this section); provided, however, that an additional 90 days shall be available each time the sound recording is re-released by the record company in a remastered form or as part of a compilation with a different set of sound recordings than prior compilations that include that sound recording;

(2) In the case of interactive streaming through a service devoted to one featured artist, the interactive streams subject to this paragraph (c) of this section of a particular sound recording are made or authorized by the record company on no more than one official artist site per artist and are recordings of that artist; and

(3) In the case of interactive streaming through a service that is not limited to a single featured artist, all interactive streaming on such service (whether eligible for the promotional royalty rate or not) is limited to sound recordings of a single record company and its affiliates and the service would not reasonably be considered to be a meaningful substitute for a paid music service.

(d) *Interactive streaming of clips.* In addition to those in paragraph (a) of this section, the provisions of this paragraph (d) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate of segments of sound recordings of musical works with a playing time that does not exceed the greater of

(1) 30 seconds, or

(2) 10% of the playing time of the complete sound recording, but in no event in excess of 60 seconds. Such interactive streams may be made or authorized by a record company under the promotional royalty rate without any of the temporal limitations set forth in paragraphs (b) and (c) of this section (but subject to the other conditions of paragraphs (b) and (c) of this section, as applicable). For clarity, this paragraph (d) is strictly limited to the uses described herein and shall not be construed as permitting the creation or use of an excerpt of a musical work in violation of 17 U.S.C. 106(2) or 115(a)(2) or any other right of a musical work owner.

(e) *Activities prior to the publication date.* Notwithstanding paragraphs (a) through (d) of this section, in the case of licensed activity prior to the publication date, the promotional royalty rate shall apply to promotional interactive streams, and to limited downloads offered in the context of a free trial period for a digital music subscription service, that in either case are authorized by the relevant record company, if the condition set forth in paragraph (a)(1)(i) of this section is satisfied, subject only to the additional condition in paragraph (b)(1) of this section, and provided that a free trial period for a digital music subscription service authorized by the relevant record company shall be considered to be of 30 days' duration. In the event of a dispute concerning the eligibility of licensed activity prior to the publication date for the promotional royalty rate, a service asserting that its licensed activity is eligible for the promotional royalty rate shall bear the burden of proving that its licensed activity was authorized by the relevant record company and shall certify that the condition in paragraph (b)(1) of this section was satisfied.

§ 385.15 Timing of payments.

Payment for any accounting period for which payment otherwise would be due more than 180 days after the publication date shall be due as otherwise provided under 17 U.S.C. 115 and its implementing regulations. Payment for any prior accounting period shall be due 180 days after the publication date.

§ 385.16 Reproduction and distribution rights covered.

A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed activity, solely for the purpose of providing such licensed activity (and no other purpose).

§ 385.17 Effect of rates.

In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.

Dated: September 25, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–23184 Filed 9–30–08; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0647; FRL–8382–4]

Chlorantraniliprole; Proposed Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish time-limited tolerances for residues of chlorantraniliprole in or on cowpeas, forage and hay; field peas, vines and hay; forage, fodder and straw of cereal grains, crop group 16; grass forage, fodder and hay, crop group 17; leaves of root and tuber vegetables, crop group 2, leeks, nongrass animal feeds (forage, fodder, straw and hay), crop group 18; okra; onions, green; onions, Welsh; peanuts, hay; shallots; soybeans, forage and hay; strawberries and sugarcane, sugar under the Federal Food, Drug, and Cosmetic Act (FFDCA). The tolerances expire on April 25, 2010.

DATES: Comments must be received on or before December 1, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0647, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0647. 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.

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, is not placed on the Internet and will be publicly available only in hard copy form. 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 OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., 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.

FOR FURTHER INFORMATION CONTACT: Kable Bo Davis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 306–0415; e-mail address: *davis.kable@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. 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 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 and Statutory Findings

EPA on its own initiative, under section 408(e) of FFDCA, 21 U.S.C. 346a(e), is proposing to establish a tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on cowpeas, forage and hay at 0.20 parts per million (ppm); field peas, vines and hay at 0.20 ppm; forage, fodder and straw of cereal grains, crop group 16 at 0.20 ppm, grass forage, fodder and hay, crop group 17 at 0.20 ppm; leaves of root and tuber vegetables, crop group 2 at 0.20 ppm; leeks at 0.20 ppm; nongrass animal feeds (forage, fodder, straw and hay), crop group 18 at 0.20 ppm; okra at 0.70 ppm; onions, green at 0.20 ppm; onions,

Welsh at 0.20 ppm; peanuts, hay at 0.20 ppm; shallots at 0.20 ppm; soybeans, forage and hay at 0.20 ppm; strawberries at 1.2 ppm; and sugarcane, sugar at 0.20 ppm.

Recently, EPA established tolerances for chlorantraniliprole on apple, wet pomace; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; cotton, gin byproduct; cotton, hulls; cotton undelinted seed; fruit, pome, group 11; fruit, stone, group 12; grape; grape, raisen; potato; vegetable, cucurbit, group 9; vegetable, fruiting, group 8; vegetable, leafy, except brassica, group 4; milk; meat; meat byproduct and fat. At that time EPA determined rotational crop tolerances were required, and that the petitioner needed to conduct extensive field rotational crop trials. The Agency concluded that until the requested data are submitted, a restriction should be imposed on labels prohibiting the rotation to any crop not on the label. In response, the registrant submitted proposals for the establishment of tolerances for inadvertent residues for a number of crops pending submission of the requested data. After considering the registrant's submission, EPA is now proposing time-limited tolerances to address rotated crops.

EPA has decided to propose time-limited rotational crop tolerances for chlorantraniliprole. Rotational crop trials (2003, 2004, 2005) were conducted in Canada and the United States on leafy vegetables (Swiss chard, lettuce, spinach), root vegetables (radish, beet, turnip), cereal grains (wheat, oat) and soybean. Based on the data on chlorantraniliprole, the Agency believes that the residue data would not underestimate residues on rotated crops. Thus the Agency believes that the 0.20 ppm tolerances on rotational crops are appropriate and protective. EPA also determined that adding these proposed tolerances would not change its prior safety finding for chlorantraniliprole. EPA's updated risk assessment can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0647.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that '' there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . ''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on cowpeas, forage and hay at 0.20 ppm; field peas, vines and hay at 0.20 ppm; forage, fodder and straw of cereal grains, crop group 16 at 0.20 ppm, grass forage, fodder and hay, crop group 17 at 0.20 ppm; leaves of root and tuber vegetables, crop group 2 at 0.20 ppm; leeks at 0.20 ppm; nongrass animal feeds (forage, fodder, straw and hay), crop group 18 at 0.20 ppm; okra at 0.70 ppm; onions, green at 0.20 ppm; onions, Welsh at 0.20 ppm; peanuts, hay at 0.20 ppm; shallots at 0.20 ppm; soybeans, forage and hay at 0.20 ppm; strawberries at 1.20 ppm; and sugarcane, sugar at 0.20 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Chlorantraniliprole has no significant acute toxicity via the oral, dermal, and inhalation routes of exposure. This substance is not an eye or skin irritant and does not cause skin sensitization. In short-term studies, the most consistent effects are those associated with non adverse pharmacological response to the xenobiotic, induction of liver enzymes and subsequent increase in liver weights. Chlorantraniliprole is not genotoxic, neurotoxic, immunotoxic, carcinogenic, or teratogenic. Furthermore, it is not uniquely toxic to the conceptus as there were no maternal or fetal effects in studies conducted in rats and rabbits. Based on the results of a 28–day dermal study in rats, as well as the dermal LD_{50} study, chlorantraniliprole has relatively low dermal toxicity.

Overall, chlorantraniliprole exhibits minimal mammalian toxicity after long-term exposure. The only consistent observation in the mammalian toxicology studies is an increased degree of microvesiculation of the adrenal cortex after dermal or dietary administration of chlorantraniliprole. Based on the lack of adverse effect on the function of the adrenal gland, this observation was considered treatment related, but not ''adverse.''In addition to the adrenal effects, liver effects (e.g., increased liver weight and induction of cytochrome P450 enzymes) were reported in the 90–day oral subchronic studies across species and only at the highest dose tested (HDT) >1,000 milligram/kilogram/day (mg/kg/day). While in the subchronic studies, these effects were considered adaptive, the liver effects were more pronounced in the 18–month chronic mouse study at the HDT. Increased eosinophilic foci (preneoplastic foci) were noted in male mice at 935 mg/kg/day and liver hypertrophy and weight increase were evident at the next lower dose (158 mg/kg/day), but progression to tumors was not apparent for these effects. Therefore, the eosinophilic foci appear to be an adverse effect only seen in the HDT and was graded minimal in severity.

Specific information on the studies received and the nature of the toxic effects caused by chlorantraniliprole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2007–0275 in that docket.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable

risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for chlorantraniliprole used for human risk assessment can be found at *http://www.regulations.gov* in document *Chlorantraniliprole (DPX-E2Y45): Human Health Risk Assessment for Proposed Uses on pome fruit, stone fruit, leafy vegetables, brassica leafy vegetables, cucurbit vegetables, fruiting vegetables, cotton, grapes, potatoes, rice, turf and ornamentals* pages 22–24 in docket ID number EPA–HQ–OPP–2007–0275.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to chlorantraniliprole, EPA considered exposure under the petitioned-for tolerances as well as all existing chlorantraniliprole tolerances in (40 CFR 180.628). EPA assessed dietary exposures from chlorantraniliprole in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for chlorantraniliprole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

The inclusion of additional livestock feeds such as forage, fodder and straw from cowpea, field pea, soybean, cereal grains, nongrass animal feeds or peanut does not increase the livestock dietary burdens and thus the meat and milk tolerances. While the addition of strawberries, sugarcane, leek, onions, shallot, and okra that are considered human food results in a miniscule increase in exposure, a DEEM analysis that incorporates all the new commodities does not change the risk outcome which remains at 1% of the cPAD for the most highly exposed population, children ages 1-2. In addition, the dietary exposure from leeks, onions and shallots is negligible.

iii. *Cancer*. Because chlorantraniliprole has been classified as a ''not likely human carcinogen'', a quantitative exposure assessment relative to cancer risk is not necessary.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for chlorantraniliprole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of chlorantraniliprole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of chlorantraniliprole for acute exposures are estimated to be 26.862 parts per billion (ppb) for surface water and 1.06 ppb for ground water. The EECs for chronic exposures are estimated to be 3.650 ppb for surface water and 1.06 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. Because no acute hazard, attributable to a single dose, was identified; acute dietary risk was not assessed. For chronic dietary risk assessment, the water concentration value 3.650 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorantraniliprole is registered for use on the following residential non-dietary sites: Turfgrass and ornamental plants. Although residential exposure could occur, due to the lack of toxicity identified for short-term and intermediate-term durations via the relevant routes of exposure, no risk is expected from these exposures.

Additional information on residential exposure assumptions can be found at *www.regulations.gov* (Docket ID EPA–HQ–OPP–2007–0275, pages 36 through 37).

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to chlorantraniliprole and any other substances and chlorantraniliprole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorantraniliprole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances

found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (10X) tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There were no effects on fetal growth or postnatal development up to the limit dose of 1,000 mg/kg/day in rats or rabbits in the developmental or 2-generation reproduction studies. Additionally, there were no treatment related effects on the numbers of litters, fetuses (live or dead), resorptions, sex ratio, or post-implantation loss and no effects on fetal body weights, skeletal ossification, and external, visceral, or skeletal malformations or variations.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

i. The toxicology database for chlorantraniliprole is complete for the purposes of this risk assessment and the characterization of potential prenatal and postnatal risks to infants and children.

ii. No susceptibility was identified in the toxicological database, and there are no residual uncertainties re: prenatal and/or postnatal exposure.

iii. There are no treatment-related neurotoxic findings in the acute and subchronic oral neurotoxicity studies in rats.

iv. The exposure assessment is protective: The dietary food exposure assessment utilizes tolerance level residues and 100 percent crop treated (PCT) information for all commodities. The submitted field rotational crop studies do not match those recommended in the guidelines. However, data from confined rotational crop studies and field rotational crop studies show that uptake of chlorantraniliprole is below the quantification level in roots and grains, and range of 0.01 to 0.15 ppm in tops of root vegetables and forage, fodder and straw of cereal grains and soybean. The 0.20 ppm tolerances based on the collective data should be conservative. Also, the tolerances on rotational crops strawberry and okra are conservative since the strawberry tolerance is based on residues in grape from direct application of chlorantraniliprole and the okra tolerance is based on residues resulting from direct treatment on tomato and pepper. An exposure assessment using conservative residue values is expected to be protective.

The drinking water assessment utilizes values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. By using these screening-level exposure assessments, the chronic dietary (food and drinking water) risk is not underestimated.

v. Although residential exposure is expected over the short- and possibly intermediate-term (via the dermal and/or incidental oral route), there is no hazard expected via these routes/durations, and therefore no risk for these scenarios.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. No acute risk is expected because no acute hazard, attributable to a single dose, was identified.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to chlorantraniliprole from food and water will utilize <1% of the cPAD for the population group children 1-2 years (the highest exposed subpopulation). Based the use pattern, chronic residential exposure to residues of chlorantraniliprole is not expected.

3. *Short-term/intermediate risk*. Short-term aggregate and intermediate-term exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

There is potential for short-term and intermediate-term post-application dermal (adults and children) and incidental oral (children only) exposure to chlorantraniliprole. However, due to the lack of toxicity via dermal route, as well as the lack of toxicity over the acute, short-term and intermediate-term via the oral route - no risk is expected from these exposures. Inhalation exposure is not expected due to the low vapor pressure of chlorantraniliprole (so applied/deposited residues are not expected to volatilize into the air).

4. *Aggregate cancer risk for U.S. population*. Chlorantraniliprole has been classified as a ''not likely human carcinogen.'' It is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorantraniliprole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology liquid chromatography/mass spectrometry (LC/MS) is available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no international residue limits that affect the Agency's recommendations at this time. There are no CODEX or Mexican maximum residue limits (MRLs) for chlorantraniliprole that exists at this time.

C. Conditions

Tolerances may be made permanent following submission of rotational crop residue data suitable for establishing tolerances.

V. Conclusion

Time-limited tolerances are proposed for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on cowpea, forage and hay at 0.20 ppm; field pea, vines and hay at 0.20 ppm; forage, fodder and straw of cereal grains, crop group 16 at 0.20 ppm, grass forage, fodder and hay,

crop group 17 at 0.20 ppm; leaves of root and tuber vegetables, crop group 2 at 0.20 ppm; leek at 0.20 ppm; nongrass animal feeds (forage, fodder, straw and hay), crop group 18 at 0.20 ppm; okra at 0.70 ppm; onion, green at 0.20 ppm; onion, Welsh at 0.20 ppm; peanut, hay at 0.20 ppm; shallot at 0.20 ppm; soybean, forage and hay at 0.20 ppm; strawberries at 1.20 ppm; and sugarcane, sugar at 0.20 ppm.

VI. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Agency hereby certifies, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this proposed action will not have significant negative economic impact on a substantial number of small entities. A tolerance is one of the regulatory requirements needed for use of a pesticide and thus establishing a tolerance is expected to have no adverse economic impact. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 3175, 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.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.628 is amended by revising paragraph (d) to read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

* * * * *

(d) *Indirect or inadvertent resisues.* Time-limited tolerances are established for indirect or inadvertent residues of the insecticide chlorantraniliprole (3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide) in or on the following commodities. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Animal feed, nongrass, group 18	0.20	4/25/10
Cowpea, forage	0.20	4/25/10
Cowpea, hay	0.20	4/25/10
Field pea, hay	0.20	4/25/10
Field pea, vine	0.20	4/25/10
Grain, cereal, forage, fodder and straw, group 16	0.20	4/25/10
Grass, forage, fodder and hay, group 17	0.20	4/25/10
Leek	0.20	4/25/10
Okra	0.70	4/25/10
Onion, green	0.20	4/25/10

Commodity	Parts per million	Expiration/revocation date
Onion, Welsh	0.20	4/25/10
Peanut, hay	0.20	4/25/10
Shallot	0.20	4/25/10
Soybean, forage	0.20	4/25/10
Soybean, hay	0.20	4/25/10
Strawberry	1.20	4/25/10
Sugarcane	0.20	4/25/10
Vegetable, leaves of root and tuber, group 2	0.20	4/25/10

[FR Doc. E8–22946 Filed 9–30–08; 8:45 am]

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Notices

Federal Register

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Wednesday, October 1, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Office of Inspector General; Senior Executive Services (SES) Performance Review Board: Update

AGENCY: Office of Inspector General, U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated USAID OIG SES Performance Review Board.

DATES: September 21, 2008.

FOR FURTHER INFORMATION CONTACT: Paula F. Hayes, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW., Room 8.08–029, Washington, DC 20523–8700; telephone 202–712–0010; FAX 202–216–3392; Internet E-mail address: *phayes@usaid.gov* (for E-mail messages, the subject line should include the following reference—USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(b)(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and Section 430.307 thereof in particular, one or more Senior Executive Service Performance Review Boards. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published on November 20, 2007.

Approved: September 21, 2008.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

Michael G. Carroll, Deputy Inspector General;
Adrienne Rish, Assistant Inspector General for Investigations;
Paula F. Hayes, Assistant Inspector General for Management;
Lisa S. Goldfluss, Legal Counsel;
Alvin A. Brown, Assistant Inspector General, Millennium Challenge Corporation;
Howard I. Hendershot, Deputy Assistant Inspector General for Investigations;
Winona Varnon, Director, Security Services, Department of Education;
Pauline K. Brunelli, Director, Federal Voting Assistance Program Department of Defense;
Aletha Brown, Inspector General, Equal Employment Opportunity Commission;
Mark Bialek, Counsel to the Inspector General, Environmental Protection Agency;
Theodore P. Alves, Assistant Inspector General Financial Information, Department of Transportation.

Dated: September 17, 2008.

Donald A. Gambatesa,

Inspector General.

[FR Doc. E8–23099 Filed 9–30–08; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Intent To Prepare an Environmental Impact Statement for the Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) intends to prepare an Environmental Impact Statement (EIS) for the Biomass Crop Assistance Program (BCAP). BCAP is a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The EIS will assess the potential environmental impacts of alternatives for administration and implementation of BCAP. BCAP is a CCC program administered by the Farm Service Agency (FSA) with the support of other Federal and local agencies. As part of the EIS process, CCC is now soliciting input about potential alternatives for program implementation as well as potential environmental concerns associated with program implementation. CCC will develop and analyze a range of BCAP implementation alternatives. This Notice of Intent (NOI) informs the public of CCC's intent to solicit public comment on potential program alternatives and environmental concerns.

DATES: FSA, on behalf of CCC, invites comments on alternatives and environmental concerns related to BCAP. Submit comments by close of business on October 31, 2008, to ensure full consideration. We will consider comments submitted after this date, to the extent possible.

ADDRESSES: We invite you to submit comments on alternatives and environmental concerns related to BCAP. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *E-Mail*: *Matthew.Ponish@wdc.usda.gov*.
- *Fax*: (202) 720–4619.
- *Mail*: Matthew T. Ponish, National Environmental Compliance Manager, USDA, FSA, CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier*: Deliver comments to the above address.

Comments may be inspected in the Office of the Director, CEPD, FSA, USDA, Room 4709 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this notice is available through the FSA home page at *http://www.fsa.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Matthew T. Ponish, (202) 720–6853. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: BCAP is authorized by section 9001 of the 2008

Farm Bill (Pub. L. 110–246); the 2008 Farm Bill amended Title IX (Section 9011) of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill). BCAP is intended to support the establishment and production of crops for conversion to bio-energy in project areas (locations) and to assist with collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

As a new energy program, BCAP presents an opportunity to encourage landowners and operators to produce biomass for commercial energy production in ways that both are economically and environmentally sound. CCC plans to implement BCAP by approving the best-qualifying project proposals from project sponsors and then entering into contracts with individual producers in the approved project locations.

Under the National Environmental Policy Act (NEPA), the EIS process provides a means for the public to provide input on implementation alternatives and on environmental concerns. This notice informs the public of CCC's intention to prepare an EIS for BCAP.

Signed in Washington, DC, on September 24, 2008.

Glen L. Keppy,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–22990 Filed 9–30–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[NV912–1640–PH–006F; 08–08807; TAS:14X1109]

Notice of Public Meeting: Recreation Subcommittee of the Sierra Front-Northwestern Great Basin, Northeastern Great Basin, and Mojave-Southern Great Basin Resource Advisory Councils, Nevada

AGENCIES: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice of Recreation Advisory Subcommittee Meeting.

SUMMARY: In accordance with the Federal Lands Recreation Enhancement Act of 2004 (FLREA) (Pub. L. 108–447), the Recreation Subcommittee of the Bureau of Land Management's (BLM) Nevada Resource Advisory Committees will hold a meeting to discuss fee proposals to increase fees at campgrounds managed by the Forest Service in the Ely area, increase fees at Red Rock Canyon National Conservation Area, and to initiate a meeting room reservation fee at the California National Historic Trail Interpretive Center managed by the BLM Nevada Elko District Office.

DATES AND TIMES: The Recreation Subcommittee will meet on Wed., Nov. 12, 2008, from 12:30 p.m. to 4:30 p.m. A general public comment period, where the public may submit oral or written comments to the Recreation Subcommittee will begin at 4 p.m. unless otherwise listed in the final meeting agenda.

ADDRESSES: Gold Coast Hotel Casino, 4000 W. Flamingo, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Barbara Keleher, Outdoor Recreation Planner, telephone (775) 861–6628, at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada.

SUPPLEMENTARY INFORMATION: FLREA directs the Secretaries of the Interior and Agriculture to establish Recreation Resource Advisory Committees to provide advice and recommendations on recreation fees and fee areas in each State or region for Federal recreational lands and waters managed by the BLM or Forest Service. Nevada's recreation subcommittee includes members of the three existing BLM RACs and has responsibilities pertaining to both BLM and Forest Service managed Federal lands and waters according to a national interagency agreement between the Forest Service and BLM. This subcommittee will recommend new amenity fees and fee change proposals to the respective RAC(s) for each geographic region.

All meetings are open to the public. A final agenda will be available at *http://www.blm.gov/nv/st/en.html*. A news release will be sent to local and regional media at least 14 days before the meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Barbara Keleher no later than 10 days prior to the meeting.

Dated: September 18, 2008.

Ron Wenker,

BLM, Nevada State Director.

Dated: September 18, 2008.

Ed Monnig,

USFS, Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. E8–23112 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

New Creek Site 14 Rehabilitation Project, New Creek—Whites Run Subwatershed of the Potomac River Watershed, Grant County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the New Creek Site 14 Rehabilitation Project of the New Creek—Whites Run Subwatershed of the Potomac River Watershed, Grant County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Kevin Wickey, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, WV 26505, Phone: 304–284–7540.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Kevin Wickey, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to rehabilitate Site 14 to bring the site into compliance with current Natural Resources Conservation Service design criteria and performance standards. The planned works of improvement include: Raising the effective top of dam to prevent overtopping during the probable maximum precipitation (PMP) event; Installation of a new intake riser; Lining the principal spillway pipe; Installing

an impact basin; Installing an embankment surface drainage system; and Mitigating the temporary elimination of the lake's fishery.

Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kevin Wickey.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904. Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 18, 2008,

Kevin Wickey,

State Conservationist.

[FR Doc. E8–23153 Filed 9–30–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 0809241258–81264–01]

Introduction of New Application for Investment Assistance (Form ED–900)

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice; introduce funding application form.

SUMMARY: The Economic Development Administration (EDA) publishes this notice to introduce its new *Application for Investment Assistance* (Form ED–900). Previously, applicants were required to complete and submit a *Pre-Application for Investment Assistance* (Form ED–900P), followed by an *Application for Investment Assistance* (Form ED–900A) if EDA deemed that the proposed project merited further consideration. In addition, applicants were required to submit additional application forms to address EDA's programmatic requirements, depending on the type of funding assistance sought. The new Form ED–900 consolidates all EDA-specific requirements into a single application form. EDA will continue to require additional government-wide federal grant assistance forms from the Standard Form 424 family as part of the application package. This change, which is effective November 1, 2008, is prospective and will not affect previously submitted applications or require the submission of new application packages.

DATES: On October 1, 2008, EDA will make available the new Form ED–900 for use by applicants seeking EDA investment assistance. There will be a one-month period to completely phase-in the use of the new Form ED–900. Applications received before November 1, 2008 using previously issued application forms may still be processed; however, beginning November 1, 2008, only the Form ED–900, along with specific forms and attachments from the Standard Form 424 family, will be accepted for consideration. This applies to any applicant that already has submitted a *Pre-Application for Investment Assistance* (Form ED–900P). If EDA invites such an applicant's project, beginning November 1, 2008, the applicant must complete and submit the new Form ED–900, with guidance from EDA. Any applications received on or after November 1, 2008 using previously issued EDA application forms will be returned to the applicant with appropriate instructions on how to access and complete the new Form ED–900.

FOR FURTHER INFORMATION CONTACT: Maureen Klovers, Office of Regional Affairs, Economic Development Administration; Telephone: 202–482–2785; E-mail: *mklovers@eda.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In implementing this mission pursuant to the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA), EDA advances growth by providing assistance to communities and regions experiencing chronic high unemployment and low per capita income to create an environment that fosters innovation, promotes entrepreneurship, and attracts increased private capital investment. Under PWEDA, EDA provides assistance through five economic development programs that support a wide range of economic development needs: (i) Public Works, which helps support the construction or rehabilitation of essential public infrastructure and facilities; (ii) Economic Adjustment Assistance, which provides a wide range of technical, planning, and infrastructure assistance and may include Non-Construction, Revolving Loan Fund, and Design and Engineering projects; (iii) Research and National and Local Technical Assistance, which supports research projects of leading, world class economic development practices and funds information dissemination efforts; (iv) Planning, which helps support planning organizations in the development, implementation, revision or replacement of comprehensive economic development strategies and includes Short-Term and State Planning projects; and (v) the University Center Economic Development Program, which is a partnership between the federal government and academia that helps to make the varied and vast resources of universities available to economic development communities.

Previously, an applicant seeking EDA funding was required to complete and submit a maximum of three EDA-specific application forms: (i) A *Pre-Application for Investment Assistance* (Form ED–900P); (ii) an *Application for Investment Assistance* (Form ED–900A); and (iii) a program-specific supplement to Form ED–900A. The Standard Form 424 family was embedded within the Form ED–900A and the applicable program-specific supplement.

Structure of the New Form ED–900

On October 1, 2008, EDA will introduce Form ED–900, which consolidates into a single application all of EDA's program-specific requirements contained in the ED–900P, the ED–900A, and the program-specific components to ED–900A. The new Form ED–900 is divided into lettered sections that correspond to specific EDA program components (e.g., Local or National Technical Assistance; Construction Assistance), which address all of EDA's statutory and regulatory requirements. Only the first section, Section A, solicits general information regarding a proposed project and must be completed by all applicants for any type of assistance. Section B solicits specific economic data to help EDA assess an applicant's regional eligibility for Public Works or Economic Adjustment Assistance, and Section C solicits information to help EDA determine the applicant's maximum allowable investment rate for Planning, Local and National Technical Assistance, University Center, or Research and Evaluation projects. Section D solicits documents from non-

governmental applicants relevant to organizational capacity and structure. The remaining sections solicit information essential for EDA to assess project effectiveness and competitiveness by program type, such as project coordination with existing economic development strategies and potential impact. Sections E, F, G, H, I, J, K, L, M, and N solicit such information from applicants for Non-Construction, Planning, Short-Term Planning, State Planning, Local or National Technical, University Center, Economic Adjustment, Revolving Loan Fund, Construction, and Design and Engineering Assistance, respectively. The Form ED–900 also contains a series of exhibits, which include EDA and Department of Commerce assurances and the Calculation of Estimated Relocation and Land Acquisition Expenses. The text of the Form ED–900 specifies which exhibits are required for each type of applicant.

Benefits of the New Form ED–900

The agency's goal in replacing the ED–900P, the ED–900A, and the program-specific supplements to ED–900A with the Form ED–900 is to reduce significantly the paperwork burden on applicants and government personnel and to reduce confusion over which program-specific component should be submitted. In addition, because the new Form ED–900 consolidates all EDA requirements into a single application, EDA anticipates and encourages increased electronic application submission through Grants.gov at *http://www.grants.gov*. According to Paperwork Reduction Act estimates approved by the Office of Management and Budget (OMB), the use of the ED–900 will reduce applicant burden from a combined 46 hours for Forms ED–900P, ED–900A, and the project specific component to 22 hours.

Where To Obtain the New Form ED–900 and Submission Instructions

Applicants are advised to read carefully the instructions contained in the applicable Federal Funding Opportunity (FFO) announcement under which they are applying, Form ED–900, and the relevant Standard Forms (SF) 424 in the SF–424 family. The content of the application is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile transmissions of applications.

To apply for all types of EDA assistance, applicants must submit a completed Form ED–900 and the *Application for Federal Assistance* (Form SF–424), both of which are available at Grants.gov or *http://www.eda.gov/InvestmentsGrants/Application.xml*. Applicants also must submit specific forms in the SF–424 family of forms, depending on whether the applicant seeks funding for a non-construction or construction-related project. For example, if an applicant seeks funding for a non-construction project, *Budget Information—Non-Construction Programs* (Form SF–424A) and *Assurances—Non-Construction Programs* (Form SF–424B) also must be submitted. If an applicant seeks funding for a construction project, *Budget Information—Construction Programs* (Form SF–424C) and *Assurances—Construction Programs* (Form SF–424D) also must be submitted. The applicant also must submit a Department of Commerce (CD) form concerning lobbying, *Certification Regarding Lobbying* (Form CD–511) and may be required to submit to an individual background screening using *Applicant for Funding Assistance* (Form CD–346). The applicant also may be required to submit a *Disclosure of Lobbying Activities* (Form SF–LLL). All of these forms previously were required and embedded within the Form ED–900A and the applicable program-specific supplement. The new Form ED–900 provides detailed guidance to help the applicant assess whether Forms CD–346 and SF–LLL are required. All above-noted forms are available through Grants.gov or at *http://www.eda.gov/InvestmentsGrants/Application.xml*. You may find most forms on Grants.gov within the SF–424 Family Active Forms Repository at *http://apply07.grants.gov/apply/FormLinks?family=15*. Although the Form CD–346 is not available on Grants.gov as a mandatory form, the new Form ED–900 provides guidance on uploading the form for submission through Grants.gov in the optional documents section.

Please note that an applicant need not complete all sections of the Form ED–900. As noted above, the sections an applicant must complete is determined by the program under which funding is sought. Based on program type, the following table details the sections and exhibits in the ED–900 that the applicant must complete. This table also is provided on the first page of the Instructions to the Form ED–900.

EDA program	Required Form ED–900 section
Public Works	Complete Sections A, B, and M and Exhibits A, D and E.
Economic Adjustment	Complete Sections A, B, and K and Exhibit C. Also Complete Sections M and Exhibits A, D, and E if request has construction components, and Section N if request has only design/engineering requirements. Complete Section E if request has no construction components.
Partnership Planning	Complete Sections A, C, E, and F and Exhibit C.
Short-Term Planning	Complete Sections A, C, E, and G and Exhibit C.
State Planning	Complete Sections A, C, E, G, and H and Exhibit C.
University Center	Complete Sections A, C, E, and J and Exhibit C.
Local Technical Assistance	Complete Sections A, C, E, and I and Exhibit C.
National Technical Assistance	Complete Sections A, C, E, and I and Exhibit B.
Research and Evaluation Assistance	Complete Sections A, C, E and Exhibit B.
Revolving Loan Fund	Complete Sections A, B, E, K, and L and Exhibit C.
Design and Engineering	Complete Sections A, B, and N and Exhibit C.

All forms required for a complete application for EDA assistance may be submitted either: (i) In paper (hardcopy) format at the applicable regional office address provided below; or (ii) electronically in accordance with the procedures provided on Grants.gov.

Addresses and Telephone Numbers for EDA's Regional Offices: Applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee, may submit hard copy applications to: Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308, *Telephone:* (404) 730–3002, Fax: (404) 730–3025.

Applicants in Arkansas, Louisiana, New Mexico, Oklahoma and Texas may submit hard copy applications to:

Economic Development Administration, Austin Regional Office, 504 Lavaca, Suite 1100, Austin, Texas 78701–2858, *Telephone:* (512) 381–8144, Fax: (512) 381–8177.

Applicants in Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin and Muscatine and Scott counties, Iowa, may submit hard copy applications to: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606.

Telephone: (312) 353–7706, Fax: (312) 353–8575.

Applicants in Colorado, Iowa (excluding Muscatine and Scott counties), Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming, may submit hard copy applications to: Economic Development Administration, 410 17th Street, Suite 250, Denver, CO 80202.

Telephone: (303) 844–4714, Fax: (303) 844–3968.

Applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia and West Virginia, may submit hard copy applications to: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106.

Telephone: (215) 597–4603, Fax: (215) 597–1063.

Applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon, Republic of Palau and Washington, may submit hard copy applications to: Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174.

Telephone: (206) 220–7660, Fax: (206) 220–7669.

Paper Submissions: Applicants choosing this option must submit one original and two copies of the completed application via postal mail, shipped overnight or hand-delivered to the applicable regional office, unless otherwise directed by EDA staff. Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Therefore, applicants who wish to submit paper applications are advised to use guaranteed overnight delivery services.

Electronic Submissions: Applicants choosing this option should submit applications in accordance with the instructions provided at *http://www.grants.gov*. Please visit *http://www.grants.gov/assets/FindApplyUserGuide.pdf* for detailed instructions on electronic submissions. You may access the application packages for EDA's two current funding announcements, Economic Development Assistance Programs (Funding Opportunity Number EDA021908) and Supplemental Appropriations Disaster Relief Opportunity (Funding Number EDA08112008) at *http://www.grants.gov/applicants/apply_for_grants.jsp*. The preferred file format for electronic attachments to the new Form ED–900 (e.g., the project description and letters of commitment for construction projects) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, Microsoft Excel, or WordPerfect formats.

Applicants should access the following link for assistance in navigating www.grants.gov and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions*, try consulting the *Applicant's User Guide*. If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1.800.518.4726. The hours of operation for *http://www.grants.gov* are Monday–Friday, 7 a.m. to 9 p.m. (Eastern Time) (except for federal holidays).

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the applicable FFO announcement, contact the appropriate EDA regional office listed above. EDA's Internet Web site at *http://www.eda.gov* also contains additional information on EDA and its programs.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by OMB under the control number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C *Budget Information—Construction Programs*, SF–424D (*Assurances—Construction Programs*), and SF–LLL *Disclosure of Lobbying Activities* (SF–LLL) has been approved under OMB control numbers 4040–0004, 4040–0006, 4040–0007, 4040–0008, 4040–0009, and 0348–0046, respectively. The use of Form CD–346 has been approved under OMB control number 0605–0001. Notwithstanding any other provision of 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 subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: September 25, 2008.

Benjamin Erulkar,

Deputy Assistant Secretary of Commerce for Economic Development and Chief Operating Officer.

[FR Doc. E8–23116 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Balli Group PLC; Balli Aviation; Balli Holdings; Vahid Alaghband; Hassan Alaghband; Blue Sky One Ltd.; Blue Sky Two Ltd.; Blue Sky Three Ltd.; Blue Sky Four Ltd.; Blue Sky Five Ltd.; Blue Sky Six Ltd.; Blue Airways; Mahan Airways; Blue Airways Fze

In the matter of:

Balli Group PLC, 5 Stanhope Gate, London, UK, W1K 1AH;

Balli Aviation, 5 Stanhope Gate, London, UK, W1K 1AH;

Balli Holdings, 5 Stanhope Gate, London, UK, W1K 1AH;

Vahid Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;

Hassan Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;

Blue Sky One Ltd. 5 Stanhope Gate London, UK W1K 1AH
Blue Sky Two Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Three Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Four Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Five Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Six Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Airways, 8/3 D Angaght Street, 376009 Yerevan, Armenia;
Mahan Airways, Mahan Tower, No. 21, Azadegan St,. M.A. Jenah Exp. Way, Tehran, Iran, Respondents;

and

Blue Airways FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, UAE;
Blue Airways, Riqa Road, Dubai 52404, UAE, Related Persons

Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2008) (''EAR'' or the ''Regulations''), I hereby grant the request of the Bureau of Industry and Security (''BIS'') to renew for 180 days the Order Temporarily Denying the Export Privileges of Respondents Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., Blue Sky Six Ltd., Blue Airways and Mahan Air (collectively, ''Respondents'') and Blue Airways FZE and Blue Airways (collectively, the ''Related Persons''), as I find that renewal of the TDO is necessary in the public interest to prevent an imminent violation of the EAR.

I. Procedural History

On March 17, 2008, I signed an Order Temporarily Denying the Export Privileges of the Respondents for 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations (''TDO''). Pursuant to Section 766.24(a), the TDO was issued *ex parte* and went into effect on March 21, 2008, the date it was published in the **Federal Register**. On July 18, 2008, I issued an Order adding Blue Airways FZE and Blue Airways, both of Dubai, United Arab Emirates, as Related Persons to the TDO in accordance with Section 766.23 of the Regulations.[1] The TDO would expire on September 17, 2008, unless renewed in accordance with Section 766.24 of the Regulations.

On August 28, 2008, BIS, through its Office of Export Enforcement (''OEE''), filed a written request for renewal of the TDO against the Respondents for 180 days and served a copy of its request on the Respondents in accordance with Section 766.5 of the Regulations. On September 10, 2008, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd. (collectively, ''Balli'' or the ''Balli Respondents'') filed a written opposition to the request for renewal of the TDO. No opposition to renewal of the TDO was received by Respondents Blue Airways of Armenia or Mahan Air of Iran.

II. Discussion

A. Legal Standard

Pursuant to section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an imminent violation of the EAR as the term ''imminent'' violation is defined in Section 766.24. ''A violation may be 'imminent' either in time or in degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. Arguments

BIS's request for renewal of the TDO was based upon the facts underlying the issuance of the initial TDO, as well as evidence of continued actions by the Respondents that demonstrate a willingness to disregard U.S. export controls. The initial TDO was issued as a result of evidence that showed the Respondents engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Respondents were attempting to re-export an additional three U.S.-origin Boeing 747s to Iran (''Aircraft 4–6''), and had ignored a re-delivery order for Aircraft 4–6 issued by BIS in accordance with Section 758.8(b) of the Regulation. In addition, as evidenced in BIS's renewal request and the Balli Group's opposition and ''supplemental disclosure'' dated September 10, 2008, the record before me also indicates that Aircraft 1–3 continue to be flown on Mahan Air routes in violation of the Regulations and the TDO. It also shows that Aircraft 1–3 have been and continue to be flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline.[2]

In its opposition to the request for renewal of the TDO, the Balli Group Respondents assert that OEE's request for renewal does not meet the legal requirements and that further violations are not imminent. The Balli Respondents also assert that any violations of the Regulations involving Aircraft 1–3, and any false or misleading statements by the Balli Respondents, were not done or made with knowledge and were instead based on a misunderstanding of the Regulations, including the term ''re-export''; that they have been fully cooperating with BIS and are making concerted efforts to recover Aircraft 1–3 from Blue Airways of Armenia; and that the resume of [REDACTED], upon which OEE relied in part in its renewal request, is uncorroborated.[3] The Balli Respondents also assert that if BIS's goal is to prevent imminent or on-going violations of the EAR, BIS should limit renewal of the TDO to Respondents Blue Airways and Mahan Air only, and state that they do not contest that BIS has grounds to renew the TDO against Blue Airways and Mahan Air.

C. Findings

In determining whether to renew the TDO in order to prevent imminent violations of the Regulations, I have reviewed the entire record including BIS's original request for a TDO filed in March 2008, BIS's request to renew the TDO submitted on August 28, 2008, and the September 10, 2008 opposition submission filed by the Balli Respondent and its related supplemental disclosure that was filed

[1] The Related Persons Order was issued in accordance with Section 766.23 of the Regulations, 15 CFR 766.23, and was published in the **Federal Register** on July 24, 2008.

[2] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[3] None of the Respondents appealed the initial TDO.

under separate cover and also is dated September 10, 2008.

I find that violations of the Regulations have occurred involving the unlicensed re-export to Iran of Aircraft 1–3. While the Balli Respondents have asserted that they did not understand the restrictions on the re-export to Iran of U.S.-origin aircraft, their submission and related evidence are more probative of what violations have occurred, rather than calling into question BIS's evidence or its renewal request. Monthly Aircraft Reports, in the possession of the Balli Respondents per the stated lease agreements with Respondent Blue Airways, provide ample evidence that Aircraft 1–3 have been regularly being flown on Mahan Air routes, both before the Balli-Blue Airways lease agreements were extended in November 2007 and well into the TDO period.[4] Moreover, these reports, as acknowledged in Balli's submission, also show Aircraft 1–3 regularly being flown on Iran Air routes. Rather than undercutting BIS's requests, as Balli suggests, this evidence shows that the scope of violations is greater and even more significant than indicated in BIS's initial and renewal requests.

I also find that the July 2007 letters to Balli from Boeing explicitly alerted Balli that Boeing would not be able to service Aircraft 1–3 based on evidence that the aircraft were being operated contrary to U.S. export control laws and thus put the Balli Respondents on notice regarding potential violations involving the lease of Aircraft 1–3 to Blue Airways. Similarly, by letter dated October 10, 2007, BIS warned the Balli Group, via its English counsel, that ''[i]t has come to BIS's attention there is evidence that during this lease agreement Blue Airways operated the three 747s aircraft by or for the benefit of an Iranian entity, specifically Mahan Air.''

In spite of these warnings, the Balli Respondents contend that they remained without knowledge of any potential unlawfulness regarding their conduct—maintaining what they term their ''fundamental misunderstanding'' of U.S. trade prohibitions. Balli's Opposition, at 9. They assert that they ''failed to focus on the underlying substantive legal concerns associated with Boeing and BIS communications'' because they believed they were part of a ''disinformation campaign'' orchestrated by ''Iranian expatriate groups that have a long history of hostility to Balli interests and the Alaghband family[,]'' including ''militant opposition groups hostile to Iran, including the Mujahedin-e-Khalq.'' Balli's Supplemental Disclosure, at 15, attached to and referenced in Balli's Opposition; see also Balli's Opposition, at 9.

I find this assertion to be entirely unsubstantiated and unpersuasive. As appears to occur throughout Balli's opposition, this assertion is not supported by any citation to any witness statement, whether sworn or unsworn, whether from one of the Balli Respondents or a third party. Moreover, evidence of or a finding of knowledge can be based not only on affirmative or positive knowledge, but also ''is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.'' Section 772.1, at definition of ''Knowledge.'' In sum, Balli's asserted explanation as to its claimed lack of knowledge is not credible or substantiated, and even if it were, knowledge would be established on the record here at least by a conscious disregard or willful ignorance.

Similarly, to the extent that the Balli Respondents' rely on a lack of knowledge or lack of understanding ''defense,'' those efforts are unavailing. BIS has alleged that false statement violations have occurred concerning the destination and end-user of Aircraft 1–3. The record supports the conclusion that false or misleading statements were made, whether affirmatively or through concealment or omission of material facts. See Section 764.2(g) (Misrepresentation and Concealment of Facts). As noted above, at no point before last week did the Balli Respondents disclose Mahan Air's involvement (or Iran Air's). Moreover, after being warned by BIS (and Boeing), the Balli Respondents represented to BIS (through their English counsel) by letter dated November 16, 2007, that they ''ha[d] tightened contractual representations required from Blue Airways to make more explicit that a breach of U.S. export laws would constitute a breach of the leases * * *.'' The extension of the lease agreements signed by the Balli Respondents and Blue Airways in November 2007 (again shortly after BIS expressed its concern that the planes were being operated in violation of the Regulations) contains no such provision. In fact, the Balli Respondents now assert that such language was somehow covertly removed from the draft lease agreements by Blue Airways and that they, while being represented by a large London-based law firm signed the agreements anyway. At all relevant times, Balli knew that the aircraft were regularly being operated in and out of Iran.

I also find that although the Balli Respondents have now turned over a number of documents to BIS regarding Aircraft 1–3 and Aircraft 4–6, including in conjunction with a supplemental disclosure dated September 10, 2008 (the same day its opposition to renewing the TDO was filed), they have failed to produce any documents regarding lease payments by Blue Airways that are required under the terms of the lease agreements. The failure to produce to BIS, six months after the TDO issued and three months after the documents were specifically requested by BIS, what should be readily available information in any legitimate, arms length commercial transaction raises a significant concern on BIS's part. Parties that describe themselves, as the Balli Respondents do in relation to Aircraft 1–3, as ''passive investors'' with no operational role or interest, but focused instead on cash flow and opportunities to sell the aircraft should market conditions improve, could be expected to be particularly focused on such payment issues and documents.

While BIS supports legitimate efforts to bring the violations to a halt, and has under consideration Balli's recent request to engage in certain negotiations with Blue Airways that Balli has indicated will be designed to accelerate recovery of Aircraft 1–3 from Blue Airways, such stated intentions are not a sufficient basis to sustain Balli's position that the TDO need not and should not be renewed. Moreover, according to Balli's own submissions, it was not until June 27, 2008, over three months after the TDO was issued, that Balli served Blue Airways with notices of breach or termination under the leases. This appears to be the only legal step taken to date by the Balli against Blue Airways, a step which Balli states Blue Airways has contested under the terms of the lease agreements. Similarly, the request for permission to negotiate an ''accelerated'' recovery of the aircraft was not taken until September 4, 2008, just two weeks before the TDO was set to expire. Neither the extent nor pace of these actions has stemmed or appears likely to stem the ongoing violations, nor does either contradict BIS's case or demonstrate that Balli's dealings with Blue Airways have been arms-length or that its only tie to Blue Airways is a contractual one.

Finally with regard to Aircraft 1–3, the Balli respondents argue that there is

[4] The Monthly Aircraft Reports that were referenced by Balli in its September 10, 2008 submission do not appear to include such reports post-dating June 2008. The record indicates, however, that Aircraft 1–3 are still being operated in violation of the Regulations.

no ''substantive corroborating evidence'' concerning the resume of [REDACTED] referenced in BIS's renewal request. However, the record here clearly demonstrates, inter alia, that violations of the Regulations have occurred, that those violations involved Mahan Air, and that the Balli Respondents knew or had reason to know of those violations. The Balli Respondents nonetheless renewed the lease agreements with Blue Airways, misrepresented or concealed material facts during BIS's investigation, and have failed to take significant or diligent action against Blue Airways. The fact that the violations have also involved Iran Air, an Iranian Government airline, does not undermine the evidence relating to Mahan Air, given the evidence referenced by BIS that the Iranian Government is engaged in concerted covert efforts to acquire U.S.-origin aircraft. The evidence relating to Iran Air underscores, rather than undermines, the need for renewal of the TDO.

Moreover, regardless of the weight accorded the [REDACTED] resume, the record demonstrates that violations are imminent; indeed, that they are ongoing. In short, in many ways, the Balli Respondents' arguments amount to a bald assertion that BIS should ''trust us,'' but the record here indicates the contrary.

I have considered all of Balli's arguments regarding Aircraft 1–3 and found them unpersuasive. With regard to Aircraft 4–6, absent additional or supplemental evidence showing that the planes have in fact been repossessed by the lender and that the Balli Respondents no longer have or claim any interest in those aircraft, I find it premature to remove Blue Sky Four Ltd., Blue Sky Five Ltd., or Blue Sky Six Ltd. from the TDO. BIS will consider appropriate supplemental submissions by the Balli Respondents regarding Aircraft 4–6.[5]

I find that the evidence presented by BIS demonstrates that the Respondents have violated the EAR and the TDO involving re-exports to Iran of Aircraft 1–3, that such violations have been significant, deliberate and covert, and that there is a likelihood of future violations. As such, a Temporary Denial Order (''TDO'') is needed to give notice to persons and companies in the United States and abroad that they should continue to cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to prevent or preclude violations of the EAR.

Accordingly, I find pursuant to Section 766.24, that renewal of the TDO for 180 days is necessary in the public interest to prevent an imminent violation of the EAR.

III. Order

It is therefore ordered:

First, that the Respondents, BALLI GROUP PLC, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI AVIATION, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI HOLDINGS, 5 Stanhope Gate, London, UK, W1K 1AH; VAHID ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; HASSAN ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY ONE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY TWO LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY THREE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FOUR LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FIVE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY SIX LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE AIRWAYS, 8/3 D Angaght Street, 376009 Yerevan, Armenia; and MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp.Way, Tehran, Iran (each a ''Denied Person'' and collectively the ''Denied Persons''), and BLUE AIRWAYS FZE, a/k/a Blue Airways, #G22 Dubai Airport Free Zone, P.O. Box 393754 DAFZA, Dubai, United Arab Emirates and BLUE AIRWAYS, Riqa Road, Dubai 52404, United Arab Emirates (each a ''Related Person'' and collectively the ''Related Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons or Related Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons or Related Persons of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons or Related Persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons or Related Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons or Related Persons in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons or Related Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons or Related Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to

[5] The Balli Respondents state in their submission that they were compelled to default on the loan financing for Aircraft 4–6, because BIS denied their request to re-negotiate or extend that financing. This assertion is unsubstantiated and without merit. I note, inter alia, that as with other actions taken relating Aircraft 1–3, the Balli Respondents filed their request at the eleventh hour, that the lender itself never sought permission to enter into negotiations with the Balli Respondents, and that the Balli Respondents do not address the option of self-financing the aircraft through the Balli Group.

the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and the Related Persons and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Entered this 17th day of September, 2008.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E8–23089 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order.

DATES: *Effective Date:* October 1, 2008.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–882	731–TA–1022	PRC	Refined Brown Aluminum Oxide	Brandon Farlander (202) 482–0182.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information

requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: September 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23161 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of upcoming sunset reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2008

The following Sunset Review is scheduled for initiation in November 2008 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Malleable Cast Iron Pipe Fittings from the PRC (A–570–881)	Juanita Chen (202) 482–1904.
High and Ultra-High Voltage Ceramic Station Post Insulators From Japan (A–588–862)	Brandon Farlander (202) 482–0182.

Countervailing Duty Proceedings

No Sunset Reviews of countervailing duty orders are scheduled for initiation in November 2008.

Suspended Investigations

No Sunset Reviews of suspended investigations are scheduled for initiation in November 2008.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent To Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23160 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with 19 CFR 351.213, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review: Not later than the last day of October 2008,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings Period	
BRAZIL: Carbon and Certain Alloy Steel Wire Rod A–351–832	10/1/07–9/30/08
CANADA: Carbon and Certain Alloy Steel Wire Rod A–122–840	10/1/07–10/28/07
CHILE: IQF Red Raspberries[2] A–337–806	7/1/07–7/8/07
INDONESIA: Carbon and Certain Alloy Steel Wire Rod A–560–815	10/1/07–9/30/08
ITALY: Pressure Sensitive Plastic Tape A–475–059	10/1/07–9/30/08
MEXICO: Carbon and Certain Alloy Steel Wire Rod A–201–830	10/1/07–9/30/08
MOLDOVA: Carbon and Certain Alloy Steel Wire Rod A–841–805	10/1/07–9/30/08
REPUBLIC OF KOREA: Polyvinyl Alcohol A–580–850	10/1/07–9/30/08
THE PEOPLE'S REPUBLIC OF CHINA:	
Barium Carbonate A–570–880	10/1/07–9/30/08
Barium Chloride A–570–007	10/1/07–9/30/08
Helical Spring Lock Washers A–570–822	10/1/07–9/30/08
Polyvinyl Alcohol A–570–879	10/1/07–9/30/08
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod A–274–804	10/1/07–9/30/08
UKRAINE: Carbon and Certain Alloy Steel Wire Rod A–823–812	10/1/07–9/30/08
Countervailing Duty Proceedings	
BRAZIL: Carbon and Certain Alloy Steel Wire Rod C–351–833	1/1/07–12/31/07
IRAN: Roasted In-Shell Pistachios C–507–601	1/1/07–12/31/07
Suspension Agreements	
RUSSIA: Uranium A–821–802	10/1/07—9/30/08

[2] Case was inadvertently omitted from opportunity notice that published on July 11, 2008 (73 FR 39948).

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, *Attention:* Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2008. If the Department does not receive, by the last day of October 2008, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 24, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23122 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Reviews

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

EFFECTIVE DATE: October 1, 2008.

SUMMARY: The Department of Commerce (the ''Department'') has determined that two requests for new shipper reviews of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam, received on August 8, 2008, and August 26, 2008, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') of these two new shipper reviews is August 1, 2007, through July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina (SAMEFICO) or Matt Renkey (Cadovimex II) AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3927 and (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain frozen fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003). On August 8, 2008, and August 26, 2008, we received timely requests for new shipper reviews from Saigon-Mekong Fishery Co., Ltd. (''SAMEFICO'') and Cadovimex II Seafood Import-Export and Processing Joint Stock Company (''Cadovimex II'') in accordance with 19 CFR 351.214(c) and 351.214(d)(2). SAMEFICO and Cadovimex II have certified that they are both the producers and exporters of the subject merchandise upon which the requests for the new shipper reviews are based.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b)(2), SAMEFICO and Cadovimex II certified that they did not export certain frozen fish fillets to the United States during the period of investigation (''POI''). Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), SAMEFICO and Cadovimex II certified that, since the initiation of the investigation, they have never been affiliated with any exporter or producer who exported certain frozen fish fillets to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), SAMEFICO and Cadovimex II have also certified that their export activities are not controlled by the central government of the Socialist Republic of Vietnam.

In addition to the certifications described above, the exporters submitted documentation establishing the following: (1) the date on which they first shipped certain frozen fish fillets for export to the United States and the date on which the certain frozen fish fillets first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipments; and (3) the date of their first sales to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating these two new shipper reviews for shipments of certain frozen fish fillets from the Socialist Republic of Vietnam produced and exported by SAMEFICO and Cadovimex II.

We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of certain frozen fish fillets produced and exported by SAMEFICO and Cadovimex II must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current Vietnam-wide rate of 63.88 percent.

Interested parties requiring access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 25, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23150 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone-(202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2008, the Department of Commerce (the ''Department'') published a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') covering the period October 11, 2006 March 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008).

July 22, 2008, the Department rescinded the administrative review with respect to 57 companies. Calgon Carbon Corporation and Norit Americas

Inc. (''Petitioners'') withdrew their request for review of these companies and were the only parties to request review of the aforementioned 57 companies. *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review in Part*, 73 FR 42550 (July 22, 2008).

September 16, 2008, Petitioners withdrew their request for an administrative review for the following 19 companies: Datong Forward Activated Carbon Co., Ltd.; Datong Hongtai Activated Carbon Co., Ltd.; Datong Huibao Activated Carbon Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Locomotive Coal & Chemicals Co., Ltd.; Datong Yunguang Chemicals Plant; Huairen Jinbei Chemical Co., Ltd.; Ningxia Guanghua A/C Co., Ltd.; Nuclear Ningxia Activated Carbon Co., Ltd.; Panshan Import and Export Corporation; Pingluo Yu Yang Activated Carbon Co., Ltd.; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Newtime Co., Ltd.; Shanxi Sincere Industrial Co., Ltd.; Shanxi Xinhua Chemical Co., Ltd.; United Manufacturing International (Beijing) Ltd.; Xingtai Coal Chemical Co., Ltd.; Zuoyan Bright Future Activated Carbon Plant. Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, and the Secretary may extend this time limit if it is reasonable to do so. The deadline to withdraw administrative review requests made by the original requesting parties was September 2, 2008. On August 29, 2008, Petitioners requested that the Department extend this deadline. On August 29, 2008, the Department granted a three day extension to September 5, 2008. See Letter to All Interested Parties (August 29, 2008). On September 4, 2008, Petitioners requested an additional extension to the September 5, 2008 deadline. On September 4, 2008, the Department granted an 11-day extension to September 16, 2008. *See* Letter to All Interested Parties (September 4, 2008). On September 16, 2008, Petitioners requested withdrawal of their requests for administrative review of the 19 companies listed above. Because Petitioners' withdrawal of requests for review is timely and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the above–listed companies.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

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

Notification Regarding Administrative Protective Orders

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

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 25, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–23149 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

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

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

EFFECTIVE DATE: SEPTEMBER 22, 2008.

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

Resumption of Reconsideration of Sunset Review

On April 13, 2006, the Department of Commerce (the Department) published the notice of initiation of the reconsideration of the sunset review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Reconsideration of Sunset Review*, 71 FR 19164 (April 13, 2006). This review was initiated to reconsider the sunset review of the antidumping duty order on LNPP from Japan, which resulted in the revocation of that antidumping duty order. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five-year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002). The Department published its preliminary results in the reconsideration of sunset review on November 6, 2006. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Reconsideration*

of Sunset Review, 71 FR 64927 (November 6, 2006).

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

On June 17, 2008, the Court of Appeals for the Federal Circuit (CAFC) reversed the CIT's decision directing the Department to discontinue its sunset review reconsideration. The CAFC held that the issue was not ripe for judicial review and that the CIT erred in finding that the Department's stated intention to reopen the sunset review proceeding (in the context of the changed circumstances review final results) was final agency action. *See Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352 (Fed. Cir. 2008). Accordingly, the Department is resuming its reconsideration of the sunset review.

Prior to the CIT's discontinuation order issued on January 24, 2007, the final results of this review were due by March 9, 2007, or 45 days from that date. The Department was advised by the Department of Justice on September 22, 2008, that it may resume this review. Accordingly, the Department intends to issue its final results for this review no later than 45 days following its resumption of the review, *i.e.*, by November 6, 2008.

Dated: September 25, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–23163 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XK70

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 143rd meeting to consider and take actions on fishery management issues in the Western Pacific Region. The original notice published in the **Federal Register** on September 23, 2008 and this notice revises the agenda and is being republished in its entirety.

DATES: The 143rd Council meeting and public hearings will be held on October 14–17, 2008, in Honolulu, HI. For specific times and the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 143rd Council meeting and public hearings will be held at the Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI 96814; telephone: (808) 941–6611.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original meeting notice published in the **Federal Register** on September 23, 2008 (73 FR 54791).

In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Tuesday, October 14, 2008

Standing Committee Meeting

1. *8 a.m. - 10 a.m.* Executive and Budget Standing Committee
2. *10 a.m. - 12 noon* Program Planning Standing Committee
3. *1:30 p.m. - 2:30 p.m.* Fishery Rights of Indigenous People Standing Committee
4. *2:30 p.m. - 4:30 p.m.* Pelagics Ecosystem and International Fisheries Standing Committee
5. *4:30 p.m. - 6:30 p.m.* Hawaii Archipelago/Pacific Remote Island Areas (PRIA) Standing Committee

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

9 a.m. - 5:30 p.m. Wednesday, October 15, 2008

1. Introductions
2. New Council Members Oath of Office
3. Approval of Agenda
4. Approval of 142nd Meeting Minutes
5. Agency Reports

A. National Marine Fisheries Service (NMFS)

1. Pacific Islands Regional Office (PIRO)
2. Pacific Islands Fisheries Science Center (PIFSC)

B. NOAA General Counsel

C. U.S. Fish and Wildlife Service

D. Enforcement

1. U.S. Coast Guard
2. NOAA Office for Law Enforcement
3. Status of Violations

6. Program Planning

A. Program Planning and Research

1. Recommendation on Measures for Annual Catch Limits for Western Pacific Fish Stocks (ACTION ITEM)
2. Small-scale and Traditional Fisheries
3. Approval of Council's Five-Year Research Plan

B. Update on Marine Recreational Information Program (MRIP) and National Saltwater Angler Registry

C. National Eco-labeling Initiative

D. Update on Legislation

E. Update on Status of Fishery Management Plan (FMP) actions

F. Community Development Program Amendment Status

G. Coral Reefs

1. Report on U.S. Coral Reef Task Force Meeting
2. Coral Reef Program Review

H. Marine Education and Training Program Selection Process

I. Marine Conservation Area Assessment

J. National Standard 2 Review

K. Social Science Research Planning Committee Report

L. Scientific and Statistical Committee (SSC) Recommendations

M. Standing Committee Recommendations

N. Public Hearing

O. Council Discussion and Action

7. Public Comment on Non-agenda Items

6 p.m.—9 p.m. Wednesday, October 15, 2008

Fishers Forum

I. Welcome and Introductions

II. Richard Shiroma Award Presentation

III. Assessing Historical Changes in the Hawaii Bottomfish Fishery and their Effect on Calculating Catch Per Unit Effort (CPUE)

IV. 2008 Hawaii Bottomfish Stock Assessment

V. Alternatives for Bottomfish Total Allowable Catch (TAC)

VI. Public Hearing

9 a.m. - 6 p.m. Thursday, October 16, 2008

8. Hawaii Archipelago and PRIA
A. Moku PepaB. Enforcement Issues
C. Hawaii Community Issues
1. Humpback Whale Sanctuary Update
2. Monk Seal Critical Habitat in the Main Hawaiian Islands (MHI)
3. West Hawaii Fisheries Council
4. Aha Kiole Community Consultation Process
5. Green Sea Turtle Biological and Genetic Information/Classification as Distinct Population Segment
6. Other Issues
D. Main Hawaiian Islands Bottomfish
1. CPUE Workshop Report
2. Stock Assessment
3. Recommendation on Total Allowable Catch for 2008/2009 Fishing Season (ACTION ITEM)
E. Aquaculture Issues
1. Development of Projects in Hawaii
2. Expansion of Current Aquaculture Projects on Oahu
F. Coral Reef Annual Report Status
G. Education and Outreach Initiatives
H. Hawaii Regional Ecosystem Advisory Committee (REAC) Report
I. SSC Recommendations
J. Standing Committee Recommendations
K. Public Hearing
L. Council Discussion and Action
9. Marianas Archipelago
A. Arongol Faleey and Isla Informe
1. Commonwealth of the Northern Marianas Islands (CNMI)
2. Guam
B. Enforcement Issues
1. CNMI
2. Guam
C. Marianas Community Issues
1. Marianas Training Range Complex
2. Lunar Calendar Workshop
3. Report on Guam Mayors' Meeting
4. Report on Guam Village Meetings
5. Guam Indigenous Fishing Rights Legislation
6. CNMI Nearshore Fishery Regulations
7. Other Issues
D. Approval of Marine Conservation Plans
1. CNMI
2. Guam
E. Education and Outreach Initiatives
F. Report on Marianas Archipelago Plan Team Meeting
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action
10. American Samoa Archipelago
A. Motu Lipoti
B. Enforcement Issues
C. American Samoa Community Issues
1. American Samoa Fishery Development
2. Sale of Tuna Cannery
3. Rose Atoll Management
4. Other Issues
D. Education and Outreach Initiatives
E. Report on American Samoa Advisory Panel Meeting
F. Report on American Samoa Plan Team Meeting
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action

9 a.m. - 5 p.m. Friday, October 17, 2008

11. Pelagic & International Fisheries
A. Pelagics Ecosystem
1. Hawaii Shallow-set Longline Fishery Management
a. NMFS Biological Opinion
b. Draft Supplemental Environmental Impact Statement (DSEIS) Public Comments
c. Recommendation on Management Measures for Hawaii Shallow-set Longline Fishery (ACTION ITEM)
2. Recommendation on Management Measures for Fishing on Fish Aggregating Devices(FAD)in the US EEZ of the Western Pacific Region (ACTION ITEM)
3. American Samoa Longline Fishery Management
a. Recommendation on Management Measures to Minimize Turtle Interactions (ACTION ITEM)
b. Report of Public Meetings
c. NMFS Biological Opinion
4. Pelagics Fishery Management Plan Vessel Marking Regulations (ACTION ITEM)
B. American Samoa and Hawaii Longline Quarterly Reports
C. American Samoa Longline Logbook/Observer Data Analysis
D. International Fisheries
1. Western and Central Pacific Fisheries Commission (WCPFC)
a. Science Committee
b. U.S. Advisory Committee
c. Northern Committee
d. Technical & Compliance Committee
e. Update on WCPFC Rulemaking
2. Inter-American Tropical Tuna Commission (IATTC)
3. North Pacific Seamount Regional Fishery Management Organization
E. SSC Recommendations
F. Standing Committee Recommendations
G. Public Hearing
H. Council Discussion and Action
12. Administrative Matters & Budget
A. Financial Reports
B. Administrative Reports
C. Meetings and Workshops (Calendar)
D. Council Family Changes
E. Standard Operating Procedures and Protocols (SOPP)
1. Status of NMFS SOPP Review
2. Report on Internal Control Review
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
13. Other Business
A. Election of Officers
B. Next Meeting

Although non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 143rd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22926 Filed 9–30–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–HA–0119]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs. DoD.

ACTION: Notice.

SUMMARY: In accordance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the new 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the Office of the Assistant Secretary of Defense (Health Affairs) TRICARE Management Activity, Skyline Five, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, or call at (703) 681–0039.

Title; Associated Form; and OMB Number: TRICARE Plus Enrollment Application, DD Form 2853 and TRICARE Plus Disenrollment Request, DD Form 2854; OMB Control Number 0720–0028.

Needs and Uses: These collected instruments serve as an application for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. sections 1099 (which calls for a healthcare enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or household.

Annual Burden Hours: 2,933.

Number of Respondents: 25,065

Responses per Respondent: 1.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense established TRICARE Plus as an enrollment option for persons who are eligible for care in Military Treatment Facilities (MTF) and not enrolled in TRICARE Prime. TRICARE Plus provides an opportunity to enroll with a primary care provider at a specific MTF, to the extent capacity exists. This is a way to facilitate primary care appointments at an MTF when needed. TRICARE Plus enrollment will help MTFs maintain an adequate clinical case mix for Graduate Medical Education programs and support readiness-related medical skills sustainment activities. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Plus complete an enrollment application/ disenrollment request. Completion of the enrollment forms is an essential element of the TRICARE program. There is no lock-in and no enrollment fee for TRICARE Plus.

Dated: September 24, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23026 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008-HA–0120]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Department of Defense, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail*: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, Skyline Five, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206, or call at (703) 681–0064.

Title and OMB Number: DoD Patient Safety Survey; OMB Control Number 0720–0034.

Needs and Uses: The 2001 National Defense Authorization Act contained specific sections addressing patient safety in military and veteran's health care systems. This legislation stated that the Secretary of Defense shall establish a patient care error reporting and management system to study occurrences of errors in patient care and that one of the purposes of the system should be ''To identify systemic factors

that are associated with such occurrences'' and ''To provide for action to be taken to correct the identified systemic factors'' (Sec. 754, items b2 and b3). In addition, the legislation stated that the Secretary shall ''Continue research and development investments to improve communication, coordination, and team work in the provision of health care'' (Sec. 754, item d4).

In its ongoing response to this legislation, DoD implemented a Web-based patient safety culture survey to a census of all staff working in Army, Navy, and Air Force Military Health System (MHS) facilities in the U.S. and internationally, including Military Treatment Facility (MTF) hospitals as well as ambulatory and dental services. The survey obtains MHS staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response, error reporting, and overall perceptions of patient safety. The purpose of the survey is to assess the current status of patient safety in MHS facilities as well as to provide baseline input for assessment of patient safety improvement over time. Survey results will be prepared at the facility and Service levels and MHS overall.

Affected Public: Federal government; individuals or households.

Annual Burden Hours: 2,384.

Number of Respondents: 14,022.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Data Collection Method

The patient safety culture survey is administered as a web-based instrument to a census of all staff, both clinical and non-clinical, working in all U.S. and international MHS facilities. Potential respondents will receive a pre-notification letter followed by an e-mail survey notification containing an embedded hyperlink to the internet location where the survey can be completed. Two additional e-mail survey notifications will be sent, a week apart, so that the data collection field period will be four weeks for each Service. The survey takes about 10 minutes to complete. All survey responses are voluntary and will be individually anonymous; only group-level results will be tabulated to protect individual anonymity.

Dated: September 24, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23031 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board (DBB) Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: The public meeting of the Board will be held on Thursday, October 23, 2008 beginning at 8:30 a.m. and ending at 1:15 p.m., with a break from 11:30 a.m. to 12:30 p.m.

ADDRESSES: Pentagon, Room 3E863, Washington, DC (escort required, see below).

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *Phyllis.ferguson@osd.mil*, (703) 695–7563. For meeting information please contact Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *Debora.duffy@osd.mil*, (703) 697–2168.

SUPPLEMENTARY INFORMATION:

(a) Background

The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on draft recommendations from four subcommittees: (1) The Defense Contract Audit Agency Independent Review Panel, (2) A Review of Capabilities Requirements, (3) Best Practices on Export Controls, and (4) Transition Topics.

(b) Availability of Materials for the Meeting

A copy of the draft agenda and any available materials to be presented at the October 23, 2008 meeting can be obtained from the Board's Web site at *http://www.defenselink.dod/dbb* under ''Meeting Materials.''

(c) Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact Ms. Duffy at the number listed in this FR Notice no later than noon on Monday, October 20th to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 8 a.m. and complete security screening by 8:15 a.m. Security screening requires two forms of identification: 1) A government-issued photo I.D., and 2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card).

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five business days prior to the meeting so that appropriate arrangements can be made.

(d) Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public session.

Written comments are accepted until the date of the meeting, however, written comments should be received by the DFO at least five business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in this notice in the following formats (Adobe Acrobat, WordPerfect, or Word format). Please note: Since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Board's Web site.

Dated: September 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23030 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[Docket ID: DoD–2008–OS–0014]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to Amend System of Records.

SUMMARY: The National Security Agency/Central Security Service is proposing to amend an exempt system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

GNSA 16

SYSTEM NAME:

NSA/CSS Drug Testing Program (February 22, 1993, 58 FR 10531).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 7302 note; 5 U.S.C. § 7361, Drug abuse; E.O. 12564, Drug-Free Workplace; DoD Directive 1010.9, DoD Civilian Employee Drug Abuse Testing Program; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper in file folders and electronic storage media.''

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records relating to the selection of specific employees/applicants for testing, the scheduling of tests and negative test results are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive test records are permanently retained.''

SYSTEM MANAGER:

Delete entry and replace with ''NSA Drug Program Coordinator, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000. Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

GNSA 16

SYSTEM NAME:

NSA/CSS Drug Testing Program.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS applicants for employment and employees tested for the use of illegal drugs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The user's name, Social Security Number (SSN), an assigned identification (I.D.) code, organization, work phone number, and records relating to the selection, notification, and testing of covered individuals as well as urine specimens and drug test results and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7302 note; 5 U.S.C. 7361, Drug abuse; E.O. 12564, Drug-Free Workplace; DoD Directive 1010.9, DoD Civilian Employee Drug Abuse Testing Program; and E.O. 9397 (SSN).

PURPOSE(S):

The system is used to maintain NSA/CSS Drug Program Coordinator records on the selection, notification, and testing (i.e., urine specimens, drug test results, chain of custody records, etc.) of employees and applicants for employment for illegal drug use.

Records contained in this system are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's Agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with provisions of 5 U.S.C. 7301, NSA/CSS' 'Blanket Routine Uses' do not apply to this system of records. To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved by the user's name, Social Security Number (SSN), or assigned identification (I.D.) code.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Records relating to the selection of specific employees/applicants for testing, the scheduling of tests and negative test results are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive test records are permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

NSA Drug Program Coordinator, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Contents of the record are obtained from the individual about whom the record pertains, from laboratories that test urine specimens for the presence of illegal drugs, from supervisors and managers and other NSA/CSS employees, from confidential sources, and from other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E8–23021 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[Docket ID: DoD–2008–OS–0115]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 10, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: September 22, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T–7040a

SYSTEM NAME:

Defense Industrial Financial Management System (DIFMS) Records.

SYSTEM LOCATIONS:

Defense Information Systems Agency, Defense Enterprise Computing Center, 7879 Wardleigh Road, Hill Air Force Base, Ogden, UT 84056–5997.

Defense Information Systems Agency, Defense Enterprise Computing Center, 5450 Carlisle Pike, P.O. Box 2045 Mechanicsburg, PA 17055–0975.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, Social Security Numbers (SSN), financial reports, funds control, cost management, and general ledger information, receipts, and payments for use in preparing auditable financial statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, Department of Defense Financial Management Regulation

(DoDFMR) 7000.14–R, Vol. 4, 31 U.S.C. Sections 3511 and 3513, and E.O. 9397 (SSN).

PURPOSE(S):

To support the core financial management requirements for the Department of the Navy, U.S. Marine Corps, and Air Force Depot Maintenance and Research and Development activities. This system will be the financial system of record and the central source of consolidated financial information for these DoD activities. The system will provide financial reporting, funds control, general ledger, receipts, payment, and cost management functions that will enable the customers to produce auditable financial statements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, the records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b)(3) as follows:

To the United States Department of the Treasury to report the financial status of the Working Capital funds.

To the General Accounting Office for auditing purposes.

The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Names and Social Security Numbers (SSN).

SAFEGUARDS:

Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user identifications are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system. Records are in a building protected by guards and controlled by screenings and registering of visitors.

RETENTION AND DISPOSAL:

Records are cut-off at the end of fiscal year and destroyed 6 years and 3 months after cut-off. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Finance and Accounting Service, Technology Services Organization Patuxent River, 22299 Exploration Park Drive, Bldg IV, Suite 300, Lexington Park, MD 20653–2051.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them are contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number, and a reasonable description of what they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number, and a reasonable description of what they are seeking.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From individuals, Department of the Navy, U.S. Marine Corps, and Air Force Depot Maintenance and Research and Development activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23023 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008-OS–0113]

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Office of the Inspector General (OIG) is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastormichalis at (703) 604–8723).

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

CIG–19

SYSTEM NAME:

Recall Roster/Locator Records (July 2, 2002, 67 FR 44426).

CHANGES:

* * * * *

SYSTEMS LOCATION:

Delete entry and replace with ''3n Global, 505 N. Brand Blvd, Suite 700, Glendale, CA 91203.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Component, Work/Government mobile/Home Telephone numbers, Personal Mobile telephone number (optional), Work e-mail, and Personal e-mail (optional).''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Office of the Inspector General of the Department of Defense, COOP Program Manager, Administration and Information Management Directorate, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG 19

SYSTEM NAME:

Recall Roster/Locator Records.

SYSTEM LOCATION:

3n Global, 505 N. Brand Blvd, Suite 700, Glendale, CA 91203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, military personnel and contractors assigned to the Inspector General of the Department of Defense (OIG, DoD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Component, Work/Government mobile/Home Telephone numbers, Personal Mobile telephone number (optional), Work e-mail, and Personal e-mail (optional).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 3020.26, Continuity of Operations Policy and Planning.

PURPOSE(S):

Information is being collected and maintained to ensure that the Office of the Inspector General, DoD, has the ability to recall personnel to place of duty when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions during an emergency/discovery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, or local governments or civic organizations during actual emergencies, exercises or continuity of operation tests for the purpose of responding to emergency situations.

The DoD ''Blanket Routine Uses'' published at the beginning of the OIG DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name and by organization.

SAFEGUARDS:

Records are maintained in areas accessible only to OIG DoD personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings in locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are perpetual because individual records are deleted or added when the file is updated.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Inspector General of the Department of Defense, COOP Program Manager, Administration and Information Management Directorate, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves in contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name and work organization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other information obtained from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23024 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0118]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was

submitted on September 23, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T–7305

SYSTEM NAME:

Departmental Cash Management System (DCMS) Records.

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 7879 Wardleigh Road, Hill Air Force Base, Utah 84058–5997.

Defense Information Systems Agency, Defense Enterprise Computing Center, Mechanicsburg, Bldg 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

Defense Finance and Accounting Service, DFAS-Denver, 6760 E. Irvington Place, Denver, CO 80279–8000.

Defense Finance and Accounting Service, DFAS-Limestone, 27 Arkansas Road, Limestone, ME 04751–1500.

Defense Finance and Accounting Service, DFAS-Japan, Building 206 Unit 5220, APO AP 96328–5220.

Defense Finance and Accounting Service, DFAS-Columbus, 3990 East Broad St, Columbus, OH 43213–1152.

Defense Finance and Accounting Service, DFAS-Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–0100.

Secretary of the Air Force, SAF/FMBMB–AFO, 201 12th Street Suite 512B, Arlington, VA 22202–5408.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force (USAF), Army, Navy, Marine Corps, active, reserve, and guard members, Defense Security Service and National Geospatial-Intelligence Agency civilian employees, Department of Defense (DoD) civilian employees, paid by appropriated funds and whose pay is processed by the Defense Finance and Accounting Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, Social Security Number (SSN), year and appropriation for processing accounting transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R Vol. 4, 31 U.S.C. Sections 3511, 3512, and 3513, and E.O. 9397 (SSN).

PURPOSE(S):

This Air Force system will manage and reconcile cash disbursements, reimbursements, collections, and receipts department-wide. It will reconcile interfund processing for network users, and provide support for improved cash management business processes by consolidating and generating annual reports of expenditures and receipts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records in file folders.

RETRIEVABILITY:

Individual's name or Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, and then destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing the electronic media and recycling hardcopy records. The recycled hardcopies are destroyed by shredding, burning, or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Denver, System Management Directorate, Accounting and Cash Systems, 6760 E. Irvington Place, Denver, CO 80279–8000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of what they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual concerned, DoD Components, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23025 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0117]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Defense Contract Audit Agency proposes to add a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Senior Advisor, Defense Contract Audit Agency, Information and Privacy, CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl Aaron at (703) 767–6219.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on September 22, 2008, to the House Committee on Government Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 590.14

SYSTEM NAME:

Access Request Records.

SYSTEM LOCATION:

Chief, Information Technology Operations, Headquarters, Defense Contract Audit Agency, *ATTN:* DCAA OIT, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Contract Audit Agency (DCAA) civilian personnel and contractor employees, and any individuals requiring access to DCAA-controlled networks, computer systems, and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains documents relating to requests for and grants of access to DCAA computer networks, systems, or databases. The records contain the individual's name; Social Security Number (SSN); citizenship; physical and electronic addresses; work telephone numbers; office symbol; contractor/employee status; type of access/permissions required; verification of need-to-know; dates of mandatory information assurance awareness training; and security clearance data. For contractors, the system also contains the company name, contract number, and contract expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of Authority; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 18 U.S.C. 1029, Access device fraud; and E.O. 10450 Security Requirements for Government Employees as amended; DoDI 8500.2, Information Assurance (IA) Implementation; and E.O. 9397 (SSN).

PURPOSE(S):

To control and track access to DCAA-controlled networks, computer systems, and databases. The records may also be used by law enforcement officials to identify the occurrence of and assist in the prevention of computer misuse and/or crime. Statistical data, with all personal identifiers removed, may be used by management for system efficiency, workload calculation, or reporting purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's name or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Only the originator and DCAA security office can view an individual's SSN. Electronic records are stored on computer systems employing software programs that monitor network traffic to identify unauthorized attempts to upload or change information. Access to computer systems is password and/or Public Key Infrastructure controlled.

RETENTION AND DISPOSAL:

Records are deleted when no longer needed for administrative, legal, audit, or other operational purposes. Records relating to contractor access are destroyed 3 years after contract completion or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Technology Operations, Headquarters Defense Contract Audit Agency, *ATTN:* DCAA OIT, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Contract Audit Agency, *ATTN:* CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests will contain individual's name, Social Security Number (SSN), proof of identification and any other pertinent information necessary.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Contract Audit Agency, *ATTN:* CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests will contain individual's name, Social Security

Number (SSN), proof of identification and any other pertinent information necessary.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is supplied by record subjects, their supervisors, and the personnel security staff. Some data, such as information technology access code, is supplied by the Information Technology staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23027 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0116]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft, 303–676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 22, 2008, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

T4500a

SYSTEM NAME:

Defense Transportation Payment System—Accounting (DTRS–A) Records.

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center, Ogden, 8705 Industrial Blvd., Tinker AFB OK 73145–3352.

Defense Finance & Accounting Service (DFAS), Indianapolis, Systems Management Directorate, Vendor Payment System, 8899 E. 56th Street, Indianapolis, IN 46249–0100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force, Army, active, and reserve members, Department of Defense (DoD) civilian employees, and other Federal civilian employees paid by appropriated funds, such as U.S. Department of State and Federal Bureau of Prisons employees whose household goods claims are processed by the Defense Finance and Accounting Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Numbers (SSN), Electronic Fund Transfer data, addresses, and financial payment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5, 31 U.S.C. Section 3511, 3512, and 3513, and E.O. 9397.

PURPOSE(S):

It will be a standard base level entitlement system used for making government transportation tickets and government excess baggage allowance ticket payments. The system will contain accounting records for funding authority, commitments, and obligations. The system will account for and produce monthly financial status reports related to the household goods transportation payments that are made to moving companies, carriers, vendors, service members, Department of Defense (DoD) civilian employees, and U.S. Department of State and Federal Bureau of Prisons' Federal civilian employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The DoD 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

To the U.S. Department of State to provide accounting and financial status reports or other data contained in this system related to the household goods transportation payments made to moving companies, carriers, and vendors, for this agency.

To the Federal Bureau of Prisons to provide accounting and financial status reports or other data contained in this system related to the household goods transportation payments made to moving companies, carriers, and vendors, for this agency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically storage media and paper records in file folders.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to authorized individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records are temporary in nature, cut off at the end of the fiscal year and destroyed 6 years and 3 months after

cutoff. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, System Management Directorate, Vendor Payment System, 8899 E. 56th Street, Indianapolis IN, 46249–0100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting, Freedom of Information/Privacy Act Program Manager, Corporate Communication and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of the record they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of the record they are seeking.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Freedom of Information/Privacy Act Program Manager, Corporate Communication and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individual concerned, DoD Components, and other Federal agencies such as, the U.S. Department of State and Federal Bureau of Prisons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23029 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0021]

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Personnel Center, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Community College of the Air Force announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to enhance the quality, utility, and clarity of the information to be collected; and (e) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 1, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to Plans and Research Division, Community College of the Air Force, CCAF/DFI, 130 W. Maxwell Blvd., Maxwell AFB, AL 36112–6613, or call the Community College of the Air Force Institutional Effectiveness Divisions at (334) 953–2703.

Title and OMB Number: Community College of the Air Force Alumni Survey, OMB Control Number 0701–0136.

Needs and Uses: The information collection requirement is necessary to determine how effectively the institution is meeting its mission and also identify areas needing improvement. Survey results will provide data on the usefulness and acceptance of the Community College of the Air Force degree in the civilian sector. Documenting the institution's effectiveness is also required to maintain the Community College of the Air Force's regional accreditation.

Affected Public: Separated and retired Community College of the Air Force graduates.

Annual Burden Hours: 133.

Number of Respondents: 400.

Responses per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: Biennial.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents will be separated and retired Community College of the Air Force graduates. Approximately 2,000 Community College of the Air Force graduates will be surveyed biennially to determine the effectiveness of the institution and the usefulness of the Community College of the Air Force degree in the civilian sector. A notification letter will be mailed directly to respondents' home addresses inviting them to complete the Alumni Survey on the Community College of the Air Force's Internet homepage.

The survey will take about 20 minutes to complete, and we expect to have about 400 responses. Survey results will be complied and evaluated at the Community College of the Air Force Administrative Center at Maxwell AFB, Alabama. While results will be used primarily in-house to make program improvements, findings may be publicized in the Air Force and civilian education communities.

Dated: September 24, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23015 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on September 9, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F036 AFMC E

SYSTEM NAME:

Summer Faculty Fellowship Program (SFFP) Records.

SYSTEM LOCATION:

American Society for Engineering Education (ASEE), 1818 N Street NW., Suite 600, Washington, DC 20036–2479.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

University professors/researchers (U.S. citizens and permanent residents).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, resident state, mailing address, e-mail address, telephone numbers, date and place of birth, citizenship, present position, discipline, institution name and address, educational background, degrees and dates, professional employment, significant academic and professional activities, lists of publications, research experience and courses taught academic references, and current contracts or grant activities.

For professors awarded and accepting fellowships: Social Security Number (SSN) and bank account numbers to allow direct deposit of stipends and reporting to the Internal Revenue Service (IRS). In addition, voluntary demographic information on gender, ethnicity, race, and disability will be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Executive Order 9397 (SSN).

PURPOSE:

To maintain documentation of the applications and processes necessary to screen applicants and to evaluate and select the most promising researchers to award fellowships. The American Society for Engineering Education will pay stipends to awardees by direct deposit and advise the Internal Revenue Service (IRS) as required.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Special Basic Research Programs records are destroyed two years after assignment ends. Education records are destroyed after payment of last invoice. Records will be shredded or incinerated.

SYSTEM MANAGER AND ADDRESS:

Department of Air Force, Air Force Office of Scientific Research, AFRL/AFOSR/PIE, 875 North Randolph Street, Suite 325, Room 3112, Arlington, VA 22203–1768.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in the system of records should address written inquiries to Summer Faculty Fellowship Program, American Society for Engineering Education, 1818 N St., NW., Washington, DC 20036–2479.

Written requests should contain full name and e-mail and mailing address.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Summer Faculty Fellowship Program, American Society for Engineering Education, 1818 N St., NW., Washington, DC 20036–2479.

Written requests should contain full name and e-mail and mailing address.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, their references, and universities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23014 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0019]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to Delete Three Systems of Records.

SUMMARY: The Department of the Air Force is proposing to delete three systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCX, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy Lee at (703) 696–6253.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete three system of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA G

SYSTEM NAME:

Air Force Claims Information Management System (AFCIMS) (June 11, 1997, 62 FR 31793).

REASON:

The records collected for this system are covered by system of records notice F051 AF JA H, Claims Records, published on June 11, 1997. Accordingly, this Privacy Act system of records notice will be deleted.

F051 AF JA E

SYSTEM NAME:

Automated Military Justice Analysis and Management System (AMJAMS) (June 11, 1997, 62 FR 31793).

REASON:

The records collected for this system are covered by system of records notice F051 AF JA F, Courts-Martial and Article 15 Records, published on November 23, 2005. Accordingly, this Privacy Act system of records notice will be deleted.

F051 AFJA E

SYSTEM NAME:

Air Force Reserve Judge Advocate Personal Data (June 11, 1997, 62 FR 31793).

REASON:

The records collected for this system are covered by system of records notice F051 AFJA C, Judge Advocate Personnel Records, published on June 11, 1997. Accordingly, this Privacy Act system of records notice will be deleted.

[FR Doc. E8–23028 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0064]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0351c TRADOC

SYSTEM NAME:

Standardized Student Records System (December 1, 2000, 65 FR 75252).

Change system ID to ''A0350–20 TRADOC''.

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

A0350–20 TRADOC

SYSTEM NAME:

Standardized Student Records System.

SYSTEM LOCATION:

Commandant, Defense Language Institute Foreign Language Center, 1330 Plummer Street, Monterey, CA 93944–3326.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been enrolled for foreign language training at the Defense Language Institute Foreign Language Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and military administrative data, together with academic data generated at Defense Language Institute Foreign Language Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 350–20, Management of the Defense Foreign Language Program; and E.O. 9397 (SSN).

PURPOSE(S):

To establish a permanent student record used for issuing official grade transcripts and preparing statistical studies to improve training and testing methods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By Social Security Number, name, service number, class number, language and year.

SAFEGUARDS:

Records are accessible via remote terminal only by authorized personnel citing established user identifier and password.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey, 360 Patton Avenue, Monterey, CA 93944–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, Academic Records, 1330 Plummer Street, Monterey, CA 93944–3326.

Individual should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, Academic Records, 1330 Plummer Street, Monterey, CA 93944–3326.

Individuals should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23009 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0066]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army proposes to delete a system of records in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Records Management and Declassification Agency, Privacy Division, 7701 Telegraph Road, Alexandria, VA 22315.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of Army proposes to delete a system of records from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0001 SAIS

SYSTEM NAME:

Carpool Information/Registration System (July 27, 1993, 58 FR 40115).

REASON:

These records are covered under Government-wide System of Records Notice DOT/ALL 8, Employee Transportation Facilitation (April 11, 2000, 65 FR 19475).

[FR Doc. E8–23010 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2208–0069]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0190–13 OPMG

Security/Access Badges (July 25, 2008, 73 FR 43430).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Security/Access Badges and Automated Installation Entry System (AIE) Records.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals issued a security/access badge, military personnel (Active, Reserve, Guard and retired); civilian employees; contractor personnel; corporate employees; vendors and visitors entering Department of Defense properties, stations, forts, depots, arsenals, plants (both contractor and Government operated), hospitals, terminals, and other mission facilities and restricted areas, primarily used for military purposes.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's application for security/access badge on appropriate Department of Defense and Army forms; individual's special credentials, allied papers, registers, logs reflecting sequential numbering of security/access badges may also contain other relevant documentation. Name, grade, Social Security Number (SSN), status, date and place of birth, weight, height, eye color, hair color, gender, passport number, country of citizenship, geographic and electronic home and work addresses and telephone numbers, marital status, fingerprints, photographs, and identification card issue and expiration dates.

The system also includes vehicle information such as manufacturer, model year, color and vehicle type, vehicle identification number (VIN), license plate state and number, decal number, current registration, automobile insurance data, and driver's license data.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To support Department of the Army physical security and access control programs; Information Assurance program; to record personal data and vehicle information registered with the Department of the Army; to provide a record of security/access badges issued; to restrict entry to installations and activities; to ensure positive identification of personnel authorized access to restricted areas; to maintain accountability for issuance and disposition of security/access badges and for producing installation management reports.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''AIE System Program—Joint Program Manager Guardian (JPMG)/Product Manager, Force Protection Systems (PM–FPS), Attn: SFAE–CBD–GN–F, 5900 Putman Road, Suite 1, Fort Belvoir, Virginia 22060–5420.

Security Badges—Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.''

* * * * *

A0190–13 OPMG

SYSTEM NAME:

Security/Access Badges and Automated Installation Entry System (AIE) Records

SYSTEM LOCATION:

Headquarters, Department of the Army staff, field operating agencies, states' adjutant general offices, and Army installations, activities, offices world-wide that issue security badges authorized by Army Regulation 190–13, The Army Physical Security Program. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued a security/access badge, authorized members of the Uniformed Services, civilian Department of Defense and contract employees and visitors entering Department of Defense properties, stations, forts, depots, arsenals, plants (both contractor and Government operated), hospitals, terminals, and other mission facilities and restricted areas, primarily used for military purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge on appropriate Department of Defense and Army forms; individual's photograph, fingerprint record, special credentials, allied papers, registers, logs reflecting sequential numbering of security/access badges may also contain other relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 190–13, The Army Physical Security Program and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of security/access badges issued; to restrict entry to installations and activities; to ensure positive identification of personnel authorized access to restricted areas; to maintain accountability for issuance and disposition of security/access badges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number, and/or security/access badge number.

SAFEGUARDS:

Data maintained in secure buildings accessed only by personnel authorized access. Computerized information protected by alarms and established access and control procedures.

RETENTION AND DISPOSAL:

Security identification applications are maintained for 3 months after turn-in of badge or card then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

AIE System Program—Joint Program Manager Guardian (JPMG)/Product Manager, Force Protection Systems (PM–FPS), Attn: SFAE–CBD–GN–F, 5900 Putman Road, Suite 1, Fort Belvoir, Virginia 22060–5420.

Security Badges—Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23011 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0067]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend four systems of records.

SUMMARY: The Department of the Army is amending four systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0710–2a DALO

SYSTEM NAME:

Property Officer Designation Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0710–2a DALO

SYSTEM NAME:

Property Officer Designation Files

SYSTEM LOCATION:

Maintained at unit level of the Army. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with formal responsibility for U.S. Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document appointing or relieving individuals as property officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).

PURPOSE(S):

To verify an individual's authority to assume responsibility for U.S. Government property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By appointee's surname.

SAFEGUARDS:

Records are maintained in locked cabinets accessible only to designated authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed 2 years following individual's termination of appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her commander, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710–2b DALO

SYSTEM NAME:

Hand Receipt Files (February 22, 1993, 58 FR 10002).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0710–2b DALO

SYSTEM NAME:

Hand Receipt Files

SYSTEM LOCATION:

Property book offices and supply rooms at most Army activities world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian or military personnel who assume temporary custody or responsibility for United States Government or other official property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual receipts or listings reflecting acceptance of responsibility for items of property listed thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).

STORAGE:

Paper records in file folders and electronic storage media.

PURPOSE(S):

To record property in use or in custody of individuals; to provide an audit trail for property accountability; to determine responsibility for lost, damaged, or stolen property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname, Social Security Number, line number, size.

SAFEGUARDS:

Records are maintained in locked cabinets/areas accessible only to authorized personnel. Automated data are protected by administrative, physical, and technical safeguards required by Army Regulation 380–19.

RETENTION AND DISPOSAL:

Record is maintained only while property is in use by or in the custody of an individual; destroyed on turn-in or upon complete accounting for the property, or when superseded by a new receipt or listing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the activities issuing hand receipts.

Individual should provide his/her full name, installation at which a hand receipt holder, and any other may facilitate locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the property book officer at the installation where record is believed to exist.

Individual should provide his/her full name, installation at which a hand receipt holder, and any other may facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Hand receipt number on printed form or on property book.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710–2c DALO

SYSTEM NAME:

Personal Property Accounting Files (February 22, 1993, 58 FR 10002).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0710–2c DALO

SYSTEM NAME:

Personal Property Accounting Files

SYSTEM LOCATION:

Maintained Army-wide in orderly rooms of troop units. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military individuals absent without leave or absent because of illness and confined to medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting items of personal property of individuals listed in the preceding paragraph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).

PURPOSE(S):

To identify and protect property belonging to soldiers who are absent without leave or absent because of

illness and confined to medical facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By last name of individual owning the property.

SAFEGUARDS:

Records are maintained in locked cabinets accessible to authorized individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are maintained during an individual's absence and destroyed 2 years after his/her return.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the troop commanders.

For verification purposes, individuals should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit designated representatives of troop commanders holding the records.

For verification purposes, individuals should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From inventories and other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710–2d DALO

SYSTEM NAME:

Personal Clothing Record Files (February 22, 1993, 58 FR 10002).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0710–2d DALO

SYSTEM NAME:

Personal Clothing Record Files

SYSTEM LOCATION:

Maintained by Active Army training activities, National Guard Armories, and U.S. Army Reserve units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel with military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual personal clothing records (DA Form 3078).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Department of the Army; Army Regulation 710–2, Supply Policy Below the National Level and E.O. 9397 (SSN).

PURPOSE(S):

To reflect accountability for personal clothing by individual soldiers during their first six months of military service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By surname of individual concerned.

SAFEGUARDS:

Records are maintained in locked cabinets accessible only to authorized personnel having official need therefor.

RETENTION AND DISPOSAL:

For active Army personnel, the record is destroyed when individual has been in service 6 months and has fulfilled his/her final showdown inspection as required by Army Regulation 710–2. For National Guard and U.S. Army Reserve personnel, the record is transferred with the Military Personnel Records Jacket on individual's completion of basic training.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, 500 Army Pentagon, Washington, DC 20310–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the troop commanders.

Individual should provide his/her full name, Social Security Number, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the troop commanders.

Individual should provide his/her full name, Social Security Number, and current address and telephone number. Individual may review his/her record by visiting designated representatives of troop commanders.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–

21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; DA Form 3078.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23012 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0065]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0025–2 SAIS DoD

SYSTEM NAME:

Department of Defense Biometric Information Systems and Army Information Assurance for Automated Information Systems (AIS) (July 29, 2008, 73 FR 43917).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with ''Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals covered include, but are not limited to, members of the U.S. Armed Forces, DoD civilian and contractor personnel, military reserve personnel, Army and Air National Guard personnel, and other individuals (who are U.S. citizens or aliens lawfully admitted for permanent residence) requiring or requesting access to DoD or DoD controlled information systems and/or DoD or DoD contractor operated or controlled installations and facilities.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To control logical and physical access to Department of Defense (DoD) and DoD controlled information systems and DoD or DoD contractor operated or controlled installations and facilities and to support the DoD physical and logical security, force protection, identity management, personnel recovery, and information assurance programs, by identifying an individual or verifying/authenticating the identity of an individual through the use of biometrics (i.e., measurable physiological or behavioral characteristics) for purposes of protecting U.S./Coalition/allied government and/or U.S./Coalition/allied national security areas of responsibility and information.

Information assurance purposes include the administration of passwords and identification numbers for operators/users of data in automated media; identifying data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and determining the propriety of individual access into the physical data residing in automated media.''

* * * * *

A0025–2 SAIS DoD

SYSTEM NAME:

Department of Defense Biometric Information Systems and Army Information Assurance for Automated Information Systems (AIS).

SYSTEM LOCATION:

Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include, but are not limited to, members of the U.S. Armed Forces, DoD civilian and contractor personnel, military reserve personnel, Army and Air National Guard personnel, and other individuals (who are U.S. citizens or aliens lawfully admitted for permanent residence) requiring or requesting access to DoD or DoD controlled information systems and/or DoD or DoD contractor operated or controlled installations and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, biometric images, supporting documents, and biographic information including, but not limited to, name, date of birth, place of birth, height, weight, eye color, hair color, race and gender, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

To control logical and physical access to Department of Defense (DoD) and DoD controlled information systems and DoD or DoD contractor operated or controlled installations and facilities and to support the DoD physical and logical security, force protection, identity management, personnel recovery, and information assurance programs, by identifying an individual or verifying/authenticating the identity of an individual through the use of biometrics (i.e., measurable physiological or behavioral

characteristics) for purposes of protecting U.S./Coalition/allied government and/or U.S./Coalition/allied national security areas of responsibility and information.

Information assurance purposes include the administration of passwords and identification numbers for operators/users of data in automated media; identifying data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and determining the propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, tribal, local, or foreign agencies, for the purposes of law enforcement, counterterrorism, immigration management and control, and homeland security as authorized by U.S. Law or Executive Order, or for the purpose of protecting the territory, people, and interests of the United States of America against breaches of security related to DoD controlled information or facilities, and against terrorist activities.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number, subject, application program key, and biometric template, and other biometric data.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947, (304) 326–3004.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Department of Defense sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23013 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0068]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0351 NDU

SYSTEM NAME:

NDU National Defense University Student Data Files (February 22, 1993, 58 FR 10002).

CHANGES:

Change system ID to ''DNDU 01''.

* * * * *

SYSTEM NAME:

Delete entry and replace with ''National Defense University (NDU) Student Data Files.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Resident/non-resident students enrolled in courses of instruction at The National Defense University (NDU), including the Industrial College of the Armed Forces, Information Resource Management College, National War

College, Joint Forces Staff College, and the School for National Security Executive Education.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2165, National Defense University; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By Social Security Number or student identification number.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the President, National Defense University, Fort Leslie J. McNair, Washington, DC 20319–5000. Individual should provide his/her full name and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to OSD FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Individual should provide his/her full name and Social Security Number and be signed.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The OSD's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Administrative Instruction 81; 32 CFR part 301; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Resident and non-resident students, faculty evaluations and reports or transcripts from educational institutions.''

* * * * *

DNDU 01

SYSTEM NAME:

National Defense University (NDU) Student Data Files.

SYSTEM LOCATION:

National Defense University, Fort Leslie J. McNair, Washington, DC 20319–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident/non-resident students enrolled in courses of instruction at The National Defense University (NDU), including the Industrial College of the Armed Forces, Information Resource Management College, National War College, Joint Forces Staff College, and the School for National Security Executive Education.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, Social Security Number, student number, grade/rank, branch of service or civilian agency, years of Federal service, biographical data, course/section assignment, prior education, and academic and other related management data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2165, National Defense University; and E.O. 9397 (SSN).

PURPOSE(S):

To confirm attendance eligibility, monitor student progress, produce record of grades and achievements, prepare assignment rosters; to render management and statistical summaries and reports; and compile class yearbooks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: Student transcripts may be disclosed to other educational institutions.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By Social Security Number or student identification number.

SAFEGUARDS:

Records are maintained in buildings which employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated records employ software passwords; magnetic tapes are protected by user identification and manual controls. Computer room is controlled by card key system requiring positive identification and authorization.

RETENTION AND DISPOSAL:

Individual and class academic records are destroyed after 40 years. Records pertaining to extension courses are held indefinitely before being retired to the National Personnel Records Center, St. Louis, MO. Individual training records are destroyed annually; management reports are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

President, National Defense University, Fort Leslie J. McNair, Washington, DC 20319–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the President, National Defense University, Fort Leslie J. McNair, Washington, DC 20319–5000.

Individual should provide his/her full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to OSD FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individual should provide his/her full name and Social Security Number and be signed.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Administrative Instruction 81; 32 CFR part 301; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Resident and non-resident students, faculty evaluations and reports or transcripts from educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23016 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0063]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Army is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 4, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0680–31 DSC G–1

SYSTEM NAME:

Economic and Manpower Analysis (OEMA) Data Base.

SYSTEM LOCATION:

United States Military Academy, 607 Cullum Road, Washington Hall (BLDG 745), West Point, NY 10996–1798.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking information about the Army through advertising or marketing campaigns including but not limited to the Internet, direct mail, and marketing events from fiscal year 1990 and after;

Individuals entering into enlistment contracts with the Army (Active Component, Reserve Component, and National Guard) from fiscal year 1990 and after;

Individuals applying to, enrolled in, and commissioned from the United States Military Academy (USMA) and the Reserve Officer Training Corps (ROTC) from fiscal years 1980 and after;

Individuals serving in the Army Active Component as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1970 and after;

Individuals serving in the Army Reserve Component as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1990 and after;

Individuals serving in the Army National Guard as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1990 and after;

Individuals employed by the Department of the Army as DA Civilian Employees, Non-Appropriated Funds Employees, or Foreign National Employees from fiscal year 1991 and after;

Individuals retired from the Army Active Component, Reserve Component, or National Guard from fiscal year 1990 and after;

Individuals separated from the Active Component from fiscal year 1968 and after;

Individuals retired from service as a DA Civilian from fiscal year 1997 and after;

Dependents of member of Active Component, Reserve Component, or National Guard from fiscal year 1988 and after.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Service Number, Selective Service Number, Social Security Number (SSN), citizenship data, compensation data, demographic information such as home town, age, sex, race, date of birth, number of family members of sponsor, and educational level; reasons given for leaving military service; training and job specialty information, work schedule (full time, part time, intermittent), annual salary rate, occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude and performance scores, and training; participation in various in-service education and training programs; home and work addresses; Medicare eligibility and enrollment data, dental care eligibility codes, disability payment records, and education benefit records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

To facilitate manpower and personnel studies for the DoD and DA senior leadership.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), and other information maintained in the system specific to an individual.

SAFEGUARDS:

All records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of user identification codes and passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Economic and Manpower Analysis (OEMA), Washington Hall (BLDG 745), United States Military Academy, West Point, NY 10996–1798.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), Washington Hall (BLDG 745), United States Military Academy, West Point, NY 10996–1798.

Requests should contain individual's full name, Social Security Number (SSN), current address and telephone number, and other personal identifying data that would assist in locating the records. The request must be signed.

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), Washington Hall (BLDG 745), United States Military Academy, West Point, NY 10996–1798.

Requests should contain individual's full name, Social Security Number (SSN), current address and telephone number, and other personal identifying data that would assist in locating the records. The request must be signed.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official DoD systems such as: Total Army Personnel Database, Active Officers (TAPDB–AO); Total Army Personnel Database, Active Enlisted (TAPDB–AE); Total Army Personnel Database, Reserve (TAPDB–R); Total Army Personnel Database; National Guard (TAPDB–G); and Defense Manpower Data Center (DMDC).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23017 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2008–0062]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0190–45b DAMO

SYSTEM NAME:

Serious Incident Reporting Files (July 25, 2008, 73 FR 43424).

CHANGES:

Change System Identifier to ''A0190–45b OPMG''.

* * * * *

A0190–45b OPMG

SYSTEM NAME:

Serious Incident Reporting Files.

SYSTEM LOCATION:

Primary location: Office of the Deputy Chief of Staff for Operations and Plans, *ATTN:* DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440. Segments are maintained at the installation initiating the report and at the respective major Army command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen identified as the subject or victim of a serious incident reportable to Department of the Army in accordance with Army Regulation 190–40, Serious Incident Report. This includes in general any criminal act or other incident which, because of its sensitivity or nature, publicity or other considerations should be brought to the attention of Headquarters, Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the initial report of the incident plus any supplemental reports, including reports of final adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Secretary of the Army; AR 190–45, Law Enforcement Reporting and E.O. 9397 (SSN).

PURPOSE(S):

To provide the military chain of command with timely information regarding serious incidents to permit a valid early determination of possible implication; to provide an early indication of acts or conditions which may have widespread adverse publicity; to provide a means of analysis of crime and conditions conducive to crime on which to base crime prevention policies and programs; and to meet the general needs of Department of the Army staff agencies for information regarding selected incidents which impact on their respective areas of responsibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name, Social Security Number, and installation number.

SAFEGUARDS:

Buildings employ security guards and control access. Distribution and access to files are based on strict need-to-know. Records are contained in locked safes when not under personal supervision of authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 1 year after final report is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, *ATTN:* DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Chief of Staff for Operations and Plans, *ATTN:* DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

Individual should provide the full name, Social Security Number, current address and telephone number, other information verifiable from the record itself, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy of Staff for Operations and Plans, *ATTN:* DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

Individual should provide the full name, Social Security Number, current address and telephone number, other information verifiable from the record itself, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subjects, witnesses, victims, military police and U.S. Army Criminal Investigation Command personnel and special agents, informants, various Department of Defense, federal, state and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E8–23018 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2008–0061]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–60b DAJA

SYSTEM NAME:

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files (February 15, 2002, 67 FR 7140).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the Judge Advocate General, Department of the Army, Intellectual Property Office, Regulatory Law and Intellectual Property Division, 901 North Stuart Street, Arlington, VA 22203–1837.

Segments of this system may exist at the Office, Chief of Engineers, Headquarters, U.S. Army Materiel Command, and/or its major subordinate field commands.''

* * * * *

A0027–60b DAJA

SYSTEM NAME:

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Army, Intellectual Property Office, Regulatory Law and Intellectual Property Division, 901 North Stuart Street, Arlington, VA 22203–1837.

Segments of this system may exist at the Office, Chief of Engineers, Headquarters, U.S. Army Materiel Command, and/or its major subordinate field commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants or defendants in administrative proceedings or litigation with the government for improper use, infringement, enforcement of agreements, or comparable claims concerning patents or copyrights; individuals having copyrights in material in which the Department of the Army is interested; individuals who own patents which they offer to license to Department of the Army; individuals seeking private relief before the Congress because of right in inventions, patents, copyrights, or data licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative assertion of claims by and against the government and to litigation with the government for alleged misuse of patents, copyrights, trademarks, and data, including inquiries, investigations, settlements, communications with claimants or defendants, and related correspondence; documents relating to advice and assistance provided in obtaining licenses for Department of the Army use of copyright material; documents relating to the investigation and disposition of patent license offers; documents relating to investigations in connection with processing proposed legislation or bills for private relief of individuals because of rights of individuals in inventions, patents, copyrights, or data, including reports of investigations, comments or recommendations, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 17 U.S.C., Copyrights; 15 U.S.C. Chapter 22, Trademarks; 15 U.S.C. Chapter 63, Technology Innovation; Army Regulation, 27–40, Litigation; Army Regulation 27–60, Intellectual Property; Army Regulation 70–57, Military-Civilian Technology Transfer; DA PAM 27–11, Army Patents; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain evidence and record of claims and litigation involving Department of the Army concerning patents, trademarks, copyrights, and data; to maintain evidence and record of Department of the Army attempts to use copyrighted material and to receive the copyright owner's permission for such use; to maintain record and evidence of patent license offers received and investigations and reports pursuant thereto; and to maintain record and evidence of investigations of proposed legislation or bills for private relief.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To non-DoD government agencies involved in claims or litigation to determine the validity of allegations for the purposes of properly prosecuting or defending the case.

To Department of the Justice Civil Division to determine the validity of allegations for proper prosecution or defense of allegations in claims or litigation.

To Congress to receive reports for the purpose of determining the Department of the Army's position on particular bills for private relief.

To law students to permit them to provide legal support for the purposes of participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's surname and/or case number.

SAFEGUARDS:

Records are maintained in buildings which employ security guards and are accessed only by authorized personnel having official need-to-know. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Infringement allegations, patent license proffers, patent infringement and administrative litigations, data licensing and litigation, copyright infringement and litigation claims are destroyed after 30 years. Request for greater rights, royalty records and intellectual property private litigations are destroyed after 20 years; government asserted claims are destroyed after 25 years, infringement legislative claims are destroyed after 35 years; proffer and infringement claims dockets are maintained in current file area then destroyed after 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, 1777 North Kent Street, Arlington, VA 22209–2194.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, 1777 North Kent Street, Arlington, VA 22209–2194.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, 1777 North Kent Street, Arlington, VA 22209–2194.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, the Army organizational element interested in the copyrighted material or offered license, employment records, pertinent government patent files, Department of Justice and/or the government agencies involved in the claims or litigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23019 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Partially Closed Meeting of the Secretary of the Advisory Panel; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on September 05, 2008, announcing a partially closed meeting of the Secretary of the Advisory Panel (SNAP). The date and location of the meeting contained in the document have changed.

FOR FURTHER INFORMATION CONTACT: Colonel Caroline Simkins-Mullins, SECNAV Advisory Panel, Office of Program and Process Assessment, 1000 Navy Pentagon, Washington, DC 20350, *telephone:* 703–697–9154.

Correction

In the **Federal Register** of September 05, 2008, in FR Doc. E8–20554, make the following changes:

1. In the second column, on page 51799, correct the **DATES** caption to read as follows:

''**DATES:** The meeting will be held on October 16, 2008 from 8:30 a.m. to 4:30 p.m. The morning sessions on Acquisition Structure from 8:30–11:30 a.m. will be opened. The afternoon sessions will be closed.''

2. In the second column, on page 51799, correct the **ADDRESSES** caption to read as follows:

''**ADDRESSES:** The meeting will be held in Room 1E868, in the Pentagon, 1000 Navy Pentagon, Washington, DC 20350. Public access is limited due to the Pentagon Security requirements. Any individual wishing to attend the meeting must contact LCDR Cary Knox, USN at 703–693–0463 or Colonel Simkins-Mullins at 703–697–9154 no later than October 9, 2008. Members of the public who do not have Pentagon access will be required to provide the following information by October 9, 2008 in order to obtain a visitor badge: Name, Date of Birth and Social Security Number. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this meeting must enter through the Pentagon Metro Entrance between 7:45 a.m. and 8:15 a.m. Members of the public will need two forms of identification in order to receive a visitors badge and meet their escort. Members of the public will be escorted to Room 1E868 to attend the open sessions of the Advisory Panel and shall remain with designated escorts at all times while on the Pentagon Reservation. Members of the public will be escorted back to the Pentagon Metro Entrance at the 11:30 a.m.''

Dated: September 24, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–23037 Filed 9–30–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0053]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Head of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam Brown-Lam (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

NM05512–1

SYSTEM NAME:

Vehicle Parking Permit and License Control System (April 10, 2008, 73 FR 19482).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who apply for parking or who have registered their vehicles, boats, or trailers at a Navy, Marine Corps, Pacific Command, or Joint Forces Command installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles. Individuals who have completed an approved DoD motorcycle safety course (e.g., basic rider course (BRC), experienced rider course (ERC) or military sport bike course (MSBC).''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''File contains records of each individual who has registered a vehicle on the installation concerned to include parking permit information, decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number (SSN), Driver's license information (i.e., height, weight, hair and eye color), place of employment, driving record, Military I.D. information, etc. File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training.

File also contains motorcycle operator's name, place of employment and the type/date of motorcycle safety course completion.''

* * * * *

NM05512–1

SYSTEM NAME:

Vehicle Parking Permit and License Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for parking or who have registered their vehicles, boats, or trailers at a Navy, Marine Corps, Pacific Command, or Joint Forces Command installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles. Individuals who have completed an approved DoD motorcycle safety course (e.g., basic rider course

(BRC), experienced rider course (ERC) or military sport bike course (MSBC).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records of each individual who has registered a vehicle on the installation concerned to include parking permit information, decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number (SSN), Driver's license information (i.e., height, weight, hair and eye color), place of employment, driving record, Military I.D. information, etc. File also contains records/notations of traffic violations, citations, suspensions, applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training.

File also contains motorcycle operator's name, place of employment and the type/date of motorcycle safety course completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To track the issuance of parking permits and to provide a record of each individual who has registered a vehicle at an installation to include a record on individuals authorized to operate official government vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), state license plate number, case number, and organization.

SAFEGUARDS:

Limited access provided on a need-to-know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

Written requests should contain the individual's full name, Social Security Number (SSN), and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

Written requests should contain the individual's full name, Social Security Number (SSN), and the request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23022 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0054]

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to Delete Two Systems of Records Notices.

SUMMARY: The U.S. Marine Corps is proposing to delete two systems of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective without further notice on October 31, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: September 23, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

MMN00045

SYSTEM NAME:

Automated Recruit Management System (ARMS) (February 22, 1993, 58 FR 10630).

REASON:

These records are covered under System of Records Notice M01133–3, Marine Corps Recruiting Information Support System MCRISS) (May 23, 2008, 73 FR 30095).

MMN00006

SYSTEM NAME:

Marine Corps Military Personnel Records (OQR/SRB) (April 8, 2002, 67 FR 16738).

REASON:

These records are covered under System of Records Notice M01070–6, Marine Corps Official Military Personnel Files (March 17, 2008, 73 FR 14234).

[FR Doc. E8–23032 Filed 9–30–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 1, 2008.

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 Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 25, 2008.

James Hyler,

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

Institute of Education Sciences

Type of Review: Revision.

Title: CCD Teacher Compensation Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 30.

Burden Hours: 7,396.

Abstract: This is a request for the Teacher Compensation Survey, which is a new survey being added to the Common Core of Data (CCD) collection. This survey will collect data from approximately 30 states on salary, benefits and teaching experience of public school teachers in the United States. State Education Agencies will submit this data electronically to the National Center for Education Statistics (NCES) through a secure Web site using a predetermined record layout.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3855. 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. E8–23038 Filed 9–30–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–30–002]

Colorado Interstate Gas Company; Notice of Amendment

September 24, 2008.

Take notice that on September 18, 2008, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado, 80944 filed in Docket No. CP08–30–002, pursuant to section 7 of Natural Gas Act (NGA) and Part 157 of the Commission's regulations, a petition to amend its certificate of public convenience and necessity issued by the Commission on April 30, 2008 in Docket No. CP08–30–000. The purpose of the amendment is to vacate the authorization for an observation well and the installation of temporary compression, neither of which CIG states is necessary for the project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Any questions regarding this application should be directed to Richard Derryberry, Director of Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3782 or by FAX at (719) 667–7534.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the

Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: October 15, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23063 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659–019]

Crisp County Power Commission; Notice of Application for Amendment of License Soliciting Comments, Motions To Intervene, and Protests

September 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 659–019.

c. *Date Filed:* August 18, 2008.

d. *Applicant:* Crisp County Power Commission.

e. *Name of Project:* Lake Blackshear Project.

f. *Location:* The proposal would be located in Georgia Veteran's Memorial Park, on shoreline in Crisp County, Georgia. The Lake Blackshear Hydroelectric Project is located on the Flint River in Worth, Lee, Sumter, Dooly, and Crisp Counties, near Cordele, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steve Rentfrow, General Manager, 202 7th Street South, P.O. Box 1218, Cordele, GA 31010, (229) 273–3811.

i. *FERC Contact:* Jade N. Alvey, Telephone (202) 502–6864, and e-mail: *Jade.Alvey@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 24, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Crisp County Power Commission filed an application seeking Commission approval to permit the State of Georgia to construct a boat ramp within the project boundary. The boat ramp would be located in Georgia Veteran's Memorial Park as part of the Governor's initiative to improve public boating access, and under the Go Fish Georgia program. The public-use boat ramp proposal would include construction of: (1) A 4-lane boat-launching facility; (2) three piers, adjacent to the launching lanes, for boaters during launching only; (3) an additional pier for general public use; and, (4) an adjacent parking facility for 146 vehicle and trailer combinations. All activity would be conducted with measures for erosion control and protection of water quality, including final-ramp stabilization with concrete and riprap. Construction would take place during a scheduled lake drawdown, beginning November 1, 2008, and last 6 weeks.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23060 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–108]

Georgia Power Company; Notice of Application for Amendment of License Soliciting Comments, Motions To Intervene, and Protests

September 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–108.

c. *Date Filed:* August 14, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposal would be located in the Reynolds Plantation development, 5 miles south of the Georgia Highway 44 bridge as it crosses Richland Creek, on the Richland Creek section of Lake Oconee, in Greene County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lee Glenn, Lake Resources Manager, 125 Wallace Dam Road NE, Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Jade N. Alvey, Telephone (202) 502–6864, and e-mail: *Jade.Alvey@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* October 24, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Georgia Power Company filed an application seeking Commission approval to permit Linger Longer Development Company, in conjunction with its Lake Club facility, to expand an existing group dock from 8 slips to 10 slips, as well as construct an additional 10-slip group dock on Lake Oconee. The docks are to be used by residents and guests of the Reynolds Plantation community and members of Lake Club. The expansion of current dock facilities would include: (1) The construction of a total of 12 new slips; (2) 1,450 square feet of decking, including 35.15 square feet of boardwalk; (3) a 151-square-foot impervious walkway, including 117 square feet located within the 25-foot state stream buffer; and, (4) additional riprap if deemed necessary. All activity would be conducted in a manner to minimize adverse impacts on sedimentation and erosion, including the preservation of existing vegetation in the activity area, and re-vegetation as necessary. All required authorizations would be acquired from Greene County and the state of Georgia before implementation of the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at *http://www.ferc.gov* under the ''e-Filing'' link.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23062 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI08–15–000]

Independence Power, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

September 25, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI08–15–000.

c. *Date Filed:* September 11, 2008.

d. *Applicant:* Independence Power, LLC.

e. *Name of Project:* Fourth of July Creek Hydroelectric Project.

f. *Location:* The proposed Fourth of July Creek Hydroelectric Project will be located on Fourth of July Creek, near the town of Seward, Kenai Peninsula Borough, Alaska, affecting T. 1 S, R. 1 E, Seward Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Joel Groves, #310, 1503 W. 33rd Avenue, Anchorage, AK 99503; *telephone:* (907) 258–2420; *Fax:* (907) 258–2419; *e-mail: www.joel@polarconsult.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *E-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* October 27, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing link.

Please include the docket number (DI08–15–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Fourth of July Creek Hydropower Project will include: (1) A proposed 10-foot-high, 80-foot-wide diversion structure; (2) a buried desander box, directing water into a 48-inch-diameter, 4600-foot-long penstock; (3) a 50-foot-long by 80-foot-wide powerhouse, containing two 1.85 MW impulse turbines and synchronous generators; (4) a tailrace emptying into the Fourth of July Creek; (5) an approximately 8,000-foot-long transmission line, connecting to the Seward Electric distribution grid; and (6) appurtenant facilities. The proposed project will not be connected to an interstate grid, and will not occupy any tribal or federal lands

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23068 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13116–000]

Mississippi River 14 Hydro, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing, and Soliciting Comments, and Motions To Intervene

September 25, 2008.

On February 15, 2008, Mississippi River 14 Hydro, LLC and BPUS Generation Development, LLC each filed a competing application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 14 Hydroelectric Project, to be located at the U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 14, on the Mississippi River in Rock Island County and Scott County, Illinois.

Mississippi River 14 Hydro, LLC's proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 14 and would consist of: (1) A proposed powerhouse containing three generating units with an installed capacity of 26-megawatts; (2) a switchyard; (3) a proposed 1-mile, 69–kV transmission line; and (4) appurtenant facilities. The proposed Mississippi River Lock and

Dam 14 Hydroelectric Project would have an estimated annual generation of approximately 139-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: For Mississippi River 14 Hydro, LLC, Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, *phone:* (208) 745–0834.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Competing Application: This application competes with Project No. 13115–000 filed February 15, 2008. Competing applications were required to be filed on or before July 10, 2008.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13116–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23067 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12775–001]

City of Spearfish, South Dakota; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing

September 24, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Project.

b. *Project No.:* P–12775–001.

c. *Date filed:* September 10, 2008.

d. *Applicant:* City of Spearfish, South Dakota.

e. *Name of Project:* Spearfish Hydroelectric Project.

f. *Location:* On Spearfish Creek in Lawrence County, South Dakota. The project occupies about 57.3 acres of United States lands within the Black Hills National Forest administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Cheryl Johnson, Public Works Administrator, City of Spearfish, 625 Fifth Street, Spearfish, SD 57783; (605) 642–1333; or e-mail at *cherylj@city.spearfish.sd.us*.

i. *FERC Contact:* Steve Hocking at (202) 502–8753; or e-mail at *steve.hocking@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of an environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of an environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: November 10, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. The existing Spearfish Project consists of: (1) A 130-foot-long, 4-foot-high concrete gravity dam; (2) a 0.32-acre reservoir; (3) a gatehouse next to the dam that contains four 2-foot-high, 4-foot-wide steel intake gates; (4) a 4.5-mile-long, 6.5-foot-wide, 9-foot-high concrete-lined rock tunnel; (5) a forebay pond; (6) two 1,200-foot-long, 48-inch diameter, wood stave pipelines; (7) four 36-inch-diameter, 54-foot-high standpipe surge towers; (8) two 4,700-foot-long, 30- to 34-inch diameter steel penstocks; (9) a reinforced concrete powerhouse containing two Pelton turbines and two, 2,000-kilowatt generators; and (10) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
FERC issues any deficiency letter.	October 10, 2008.
FERC issues acceptance notice and Scoping Document 1 (SD1).	December 1, 2008.
FERC holds scoping meetings.	January, 2009.
All stakeholders: Interventions and protests due.	January 30, 2009.
All stakeholders: Comments on SD1 due.	February 13, 2009.
FERC issues ready for environmental analysis notice and SD2.	March 2, 2009.
All Stakeholders: Terms and conditions due.	May 1, 2009.
FERC issues single environmental assess (EA) (no draft EA).	August 3, 2009.

Milestone	Target date
All stakeholders: EA comments due.	September 2, 2009.
All stakeholders: Modified terms and conditions due.	November 2, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23061 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–083–MI]

Upper Peninsula Power Company; Notice of Availability of Environmental Assessment

September 25, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed Upper Peninsula Power Company's proposed shoreline management plan for the Bond Falls Hydroelectric Project, located on the Ontonagon River in Ontonagon and Gogebic Counties, Michigan, and Vilas County, Wisconsin, and has prepared an Environmental Assessment (EA).

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–1864) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by October 27, 2008 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–1864) on all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Jon Cofrancesco at (202) 502–8951.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23065 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1542–000]

U.S. Gas and Electric, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 25, 2008.

This is a supplemental notice in the above-referenced proceeding of U.S. Gas and Electric, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2008.

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-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23066 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–13–000]

Transmission Barriers to Entry; Notice of Technical Conference

September 24, 2008.

Take notice that the Federal Energy Regulatory Commission will hold a technical conference on October 14, 2008, from 1 p.m. to 5 p.m. (Eastern Time) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

The purpose of this conference is to explore barriers to transmission development. The agenda for this conference will be published at a later time.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Katie Detweiler, 202–502–6424, *katie.detweiler@ferc.gov* or Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23064 Filed 9–30–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0353; FRL–8723–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Motor Vehicle Emissions and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Renewal); EPA ICR No. 0783.54, OMB Control No. 2060–0104

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 31, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0353, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan, 48105; telephone number: 734–214–4851; fax number: 734–214–4869; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 20, 2008 (73 FR 29133), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0353, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Motor Vehicle Emissions and Fuel Economy Compliance: Light Duty Vehicles, Light Duty Trucks, and Highway Motorcycles (Renewal)

ICR numbers: EPA ICR No. 0783.54, OMB Control No. 2060–0104

ICR Status: This ICR is scheduled to expire on November 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the Clean Air Act (42 U.S.C. 7521 *et seq.*), manufacturers of light duty vehicles (passenger cars), light trucks, and highway motorcycles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale. In addition, light duty vehicles and light truck manufacturers must also submit fuel economy information and reports required by the Energy Policy and Conservation Act (49 U.S.C. 32901 *et seq.*). EPA reviews vehicle information and test data to determine if the vehicle design conforms to applicable requirements and to verify that the required testing has been performed. After certification, features of these programs covered by this ICR include the Manufacturers' In-Use Testing Program for light-duty vehicles, and submission of Defect Reports and Voluntary Emissions Recall Reports for light-duty vehicles and highway motorcycles to EPA. Until a vehicle is available for purchase, information is confidential. Some proprietary information is permanently confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 335 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers of light duty vehicles, light duty trucks, and highway motorcycles for sale in the United States.

Estimated Number of Respondents: 160.

Frequency of Response: yearly and occasionally.

Estimated Total Annual Hour Burden: 645,259.

Estimated Total Annual Cost: $57,764,535, which includes $5,348,350 in capital and start-up costs, $14,364,735 in O&M costs, and $38,051,450 in labor costs.

Changes in the Estimates: There is a decrease of 2,685 hours in the total

estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change is the result of many corrections, with a moderate increase in light-duty emissions hours and smaller increases in the fuel economy, motorcycle, and defect-reporting programs offset by a moderate decrease in IUVP hours reflecting efficiencies in that program due to the completion of EPA audits of manufacturer IUVP procedures and the maturing of the program, which was a startup at the time of the last renewal.

Dated: September 25, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–23146 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0707; FRL–8723–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs; EPA ICR No. 1613.03, OMB Control No. 2060–0252

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 1, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0707, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004. 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–OAR–2008–0707. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dave Sosnowski, Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4823; fax number: 734–214–4052; e-mail address: *sosnowski.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0707, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2008–0707.

Affected entities: Entities potentially affected by this action are the state government agencies or departments responsible for oversight and operation of the I/M programs (SIC#91). Thirty-three states plus the District of Columbia will be affected by I/M program requirements.

Title: Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs.

ICR number: EPA ICR No. 1613.03, OMB Control No. 2060–0252.

ICR status: This ICR is scheduled to expire February 28, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To provide general oversight and support to state and local I/M programs, the Transportation and Regional Programs Division (TRPD), Office of Transportation and Air Quality, Office of Air and Radiation, U.S. Environmental Protection Agency, requires that state or local program management for both basic and enhanced I/M programs collect two varieties of reports to EPA. The first reporting requirement is the submittal of an annual report providing general program operating data and summary statistics, addressing the program's current design and coverage, a summary of testing data, enforcement program efforts, quality assurance and quality control efforts, and other miscellaneous information allowing for an assessment of the program's relative effectiveness; the second is a biennial report on any changes to the program over the two-year period and the impact of such changes, including any weaknesses discovered and corrections made or planned.

General program effectiveness is determined by the degree to which a program misses, meets, or exceeds the emission reductions committed to in the state's approved SIP, which, in turn, must meet or exceed the minimum emission reductions expected from the relevant performance standard, as promulgated under EPA's revisions to 40 CFR, Part 51, in response to requirements established in section 182 of the Clean Air Act Amendments of 1990 (Act). This information will be used by EPA to determine a program's progress toward meeting requirements under 40 CFR, Part 51, as well as to assess national trends in the area of basic and enhanced I/M programs and to provide background information in support of periodic site visits and evaluations.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 34.

Frequency of response: Annual and Biennial.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 85 hours.

Estimated total annual costs: $4,478.

Are There Changes in the Estimates From the Last Approval?

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 25, 2008.

Sarah Dunham,

Acting Division Director, Transportation and Regional Programs Division, Office of Transportation and Air Quality.

[FR Doc. E8–23148 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8723–2; Docket ID No. EPA-HQ-ORD–2008–0245]

Draft Toxicological Review of Ethylene Glycol Mono Butyl Ether (EGBE): In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Listening Session.

SUMMARY: EPA is announcing a listening session to be held on Friday, October 10, 2008, for the external review draft document entitled, ''Toxicological Review of Ethylene Glycol Mono Butyl Ether (EGBE): In Support of Summaiy Information on the Integrated Risk Information System (IRIS).'' This listening session is a new step in EPA's revised process, announced on April 10, 2008, for development of human health assessments for inclusion on IRIS. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and prior to the external peer review meeting. EPA

welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and public comments. All presentations will become part of the official and public record.

The EPA's draft assessment and peer review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*.

DATES: The listening session on the draft IRIS health assessment for Ethylene Glycol Mono Butyl Ether (EGBE) will be held on Friday, October 10, 2008, beginning at 9 am and ending at 4 pm, Eastern Daylight Time. If you wish to make a presentation at the listening session, you should register by Wednesday, October 8, 2008, and indicate that you wish to make oral comments at the session, and indicate the length of your presentation. At the time of your registration, please indicate if you require audio-visual aid (e.g., lap top and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time will allow, then the time limit for each presentation will be adjusted accordingly. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by Wednesday, October 8, 2008, the listening session will be cancelled. EPA will notify those registered to attend of the cancellation.

The public comment period for review of this draft assessment was announced previously in the **Federal Register** (FR) (73 FR 22372) on April 25, 2008 and ended on June 24, 2008. Any technical comments submitted in response to this notice, should in writing and should be provided to EPA at the October 10 listening session or e-mailed to Christine Ross at *ross.christine@epa.gov* by October 10. All comments received will be provided to the peer review panel.

The date and logistics for the peer-review meeting were announced in a separate FR notice that was published on September 25, 2008.

ADDRESSES: The listening session on the draft Ethylene Glycol Mono Butyl Ether (EGBE) assessment will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia, 22202. To attend the listening session, register by Wednesday, October 8, 2008, via e-mail at *ross.christine@epa.gov* (subject line: Ethylene Glycol Mono Butyl Ether (EGBE) listening session), by phone: 703–347–8592, or by faxing a registration request to 703–347–8689 (please reference the ''Ethylene Glycol Mono Butyl Ether (EGBE) Listening Session'' and include your name, title, affiliation, full address and contact information). Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703–347–8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. Upon your exit from the building please return your visitor's badge and you will receive the photo identification that you provided.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 1068186199, followed by the pound sign (#). The teleconference line will be activated at 8:45 am, and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *ross.christine@epa.gov*. To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov*. If you have questions about the draft Ethylene Glycol Mono Butyl Ether (EGBE) assessment, contact Angela Howard, Hazardous Pollutants Assessment Branch, Research Triangle Park, National Center for Environmental Assessment, (B243–01), U.S. EPA, USEPA Mailroom, Research Triangle Park, NC 27711; telephone: 919–541–5133; facsimile: 919–541–0245; or e-mail: *howard.angela@epa.gov*.

SUPPLEMENTARY INFORMATION: This listening session is a new step in EPA's revised process, announced on April 10, 2008, for development of human health assessments for inclusion on IRIS. The new process is posted on the NCEA home page under the Recent Additions menu at *http://www.epa.gov/ncea*. Two listening sessions are scheduled under the new IRIS process. The first is during the public review of the draft assessment that includes only qualitative discussion. The second session is during the public review of the externally peer reviewed draft assessment; if feasible, this draft will include both qualitative and quantitation elements (i.e., a ''complete draft''). All IRIS assessments that are at the document development stage will follow the revised process, which includes the two listening sessions. However, when EPA initiated the new IRIS process, the draft assessment for Ethylene Glycol Mono Butyl Ether (EGBE) had already completed document development and been through several rounds of internal review. Therefore, EPA will only hold one listening session during the public review and comment period of the externally peer-reviewed draft.

Dated: September 24, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–22937 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0143; FRL–8384–5]

SFIREG Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal (WQPD) will hold a 2–day meeting, beginning on October 27, 2008 and ending October 28, 2008. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, October 27, 2008 from 8:30

a.m. to 5:00 p.m. and 8:30 a.m to 12 noon on Tuesday, October 28, 2008.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON 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 at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA. 4th Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561 fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; e-mail address: *grier.staytonaapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

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 ID number EPA–HQ–OPP–2008–0143. 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 Dr., 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.*

II. Background

1. State Updates/Issues
2. Assessment of Risks from Semi-volatile Pesticides in Air-State and Federal Experience and Perspective
3. Surface Water Benchmarks Update - Region 5 Pilot Project status report
4. USDA National Potable Well Sampling Program
5. Chemigation Label Referral
6. POINTS Performance Measures Reporting Tool
7. Further Cooperation between OPP and OW
8. OPP EFED Assignment of GW Statements /Revision of Chapter 8 of the Label Review Manual
9. SFIREG WQ&PD Committee Scope and Possible Name Change
10. Development/Availability of Human Health Benchmarks from OGWDW
11. Analytical Methods for Pesticides in Water and Their Availability and Distribution to States
12. OPP and OECA Updates
13. Aquatic Herbicide Permitting-Examples from Washington and Michigan

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2008–0143, must be received on or before October 21, 2008.

List of Subjects

Environmental protection.

Dated: September 22, 2008.

W. R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. E8–23133 Filed 9–30–08; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Notice of Submission for OMB Review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request to approve a new information collection as described below.

DATES: Written comments on this final notice must be submitted on or before October 31, 2008.

ADDRESSES: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Mildred A. Rivera-Rau, General Attorney, Federal Sector Programs, Office of Federal Operations, EEOC, 1801 L Street, NW., Washington, D.C. 20507; (202) 663–4590; (202) 663–7208 (TTD); *mildred.rivera@eeoc.gov.* Comments on this final notice must be submitted to Chandana Achanta, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chandana_L._Achanta@omb.eop.gov.* Comments should also be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, D.C. 20507, or by the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this Web site, follow its instructions for submitting comments. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to ensure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 or (202) 663–4074 (TTD). (These are not toll-free telephone numbers).

FOR FURTHER INFORMATION CONTACT: Barbara Dougherty, Federal Sector Programs, Office of Federal Operations, EEOC, 1801 L Street, NW., Washington, DC 20507; (202) 663–4770; (202) 663–7208 (TTD). This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on November 15, 2007, allowing for a 60-day public comment period. Five comments were received. The first comment expressed general opposition to the collection of race-specific data in any form by the federal government due to the lack of evidence that there is widespread discrimination in the federal government. In addition, this commenter believed that collection of the demographic information would harm the federal government by requiring increased representation of underrepresented groups without regard to qualifications, thus leaving the government open to litigation and claims of ''reverse'' discrimination. The commenter believed that the proposed data collection would create an emphasis to ''get numbers up to a level that is perceived to be 'right' '' and would place pressure on agencies to focus their recruitment on ''women and minorities.'' This commenter further questioned the utility of the data because some applicants would refuse to respond. Finally, this commenter found that the proposed Demographic Information on Applicants form did not explain who is considered an applicant or when the form should be administered.

A second commenter did not oppose the collection of demographic data but advised that during a November 27, 2007, Council of Federal EEO and Civil Rights Executives meeting, a manager of the Office of Personnel Management (OPM) opined that federal executives should not collect the demographic information of applicants for federal employment. The commenter requested that EEOC and OPM resolve the matter prior to seeking OMB approval. This commenter also believed that the Demographic Information on Applicants form does not use the nine categories of ''targeted'' disabilities that EEOC previously established. A third commenter requested that the definition of each demographic category used on Question 4 be eliminated for clarity and ease of form administration. The fourth and fifth commenters strongly supported the collection of demographic data. One such commenter noted that the collection would: ''ensure applicants are treated fairly; evaluate federal recruitment efforts; and identify racial, ethnic, or other disparities within the federal workforce.'' In addition, the commenters felt that the collection tool was an important step forward, will allow for more refined analysis, and enable the scrutiny of workplace practices including areas for targeted recruitment.

The perception of discrimination among federal employees and applicants is fairly widespread. According to the EEOC's latest *Annual Report on the Federal Work Force Fiscal Year 2007,* there were 37,809 completed EEO counselings at federal agencies during fiscal year (FY) 2007. Government-wide, federal employees filed 16,363 formal EEO complaints in FY 2007. Also in FY 2007, 7,869 federal hearings were requested, and EEOC's Office of Federal Operations received 5,226 appeals. These numbers show that EEOC's effort to foster the creation of agency model EEO programs through Management Directive 715 (MD–715) is a valuable endeavor. Part of that effort includes the collection of demographic information on applicants for federal employment.

The proposed Demographic Information on Applicants form neither establishes a new requirement to collect applicant flow data nor adds emphasis to the collection of such data. MD–715 has required the analysis of applicant flow data for more than four years; however, analysis was hampered by the lack of a data collection tool. Some agencies, including the Department of Transportation, already have obtained OMB approval for department-specific demographic information collection forms. The use of this proposed general form is intended to alleviate the problem of requiring each agency to seek OMB approval for a data collection tool. Finally, this collection of data does not mandate that agencies make any employment decision based on race or sex, or require a specific number of hires for any EEO group. This data collection is useful to gain an accurate picture of applicant flow in each agency to ensure that each agency is aware of the effects of its recruitment and hiring practices.

The collection of demographic data under MD–715 requires annotation of the number of applicants who were deemed qualified for each position, broken down by EEO group and occupational category. There is no requirement or implication that a particular number or percentage of applicants must be deemed qualified for any position or that unqualified applicants be selected. Each agency determines whether an applicant is qualified based on the requirements of the specific position. Applicants' EEO status is, by law, separated from the employment application prior to submission to the selecting official, thereby precluding consideration of race or national origin in the hiring decision. The use of the Demographic Information on Applicants form does not require an agency to narrow its recruitment to certain targeted EEO groups to the exclusion of other EEO groups. This tool will be used to determine if the agency is reaching a broad range of applicants from diverse groups who are qualified for the positions being posted.

The data submission is voluntary. Applicants are informed of the request and may decline to respond for any reason or no reason. If the group being measured is sufficiently large, even a partial response rate will yield useful data. If the agency does not receive a significant response, it can make note of this in its MD–715 report to EEOC.

Each agency must determine when the applicant flow form is to be distributed and by what means. This will necessarily be tailored to the method by which applications are received in each agency.

Although OPM does not concur with EEOC's view on the advisability of collecting applicant flow data, EEOC is the federal agency charged with the implementation of Title VII of the Civil Rights Act and Section 501 of the Rehabilitation Act. EEOC believes that collection and analysis of applicant flow data is an important component of any EEO program striving to achieve model workplace status. This form simply presents—to those agencies that choose to use it—a streamlined way of collecting that data.

The proposed Demographic Information on Applicants form does use the term ''disability'' despite the use of the term ''handicap'' in OPM Form 256 (on which it was modeled) as the term ''handicap'' is no longer commonly used. The nine disability categories used are those EEOC uses for MD–715 data collection. However, the commenter is correct in that three of the nine categories are slightly modified from OPM Form 256. First, there is a discrepancy in question (5)(6) in the category of ''Seizure/convulsive disorder.'' The proposed form uses the term ''seizure'' in addition to ''convulsive disorder.'' The term ''seizure'' is not used in OPM Form 256 but does accurately describe the impairment EEOC is targeting. Second, in question (5)(7) the term ''intellectual disorder'' is used along with ''mental retardation'' because more recently ''intellectual disability'' is the favored term for persons with mental retardation. Finally, in question (5)(8), EEOC uses the term ''Psychiatric Disorder or a history of treatment for mental or emotional illness.'' OPM Form 256 states this category as ''Mental or emotional illness (A history of

treatment for mental or emotional problems).'' While OPM Form 256 does not include the words ''psychiatric disorder,'' this term has come to be preferred and provides a fuller, more contemporary description. These three disability categories, which have been slightly modified, are not intended to be different from those EEOC previously has used. The minor changes are intended only to provide more clarity given the change in common usage since 1987—the year OPM Form 256 was drafted.

Due in part to the change in the definition of ''Asian'' over the past several years, EEOC believes it useful to include—in Question 4 of the proposed form—definitions for each race or national origin category. The proposed Demographic Information on Applicants form also will be revised to delete the ''n'' from the term ''Alaskan Native'' in question 4 to read ''1. American Indian or Alaska Native.'' Finally, the phrase ''and you may self identify at any time'' has been added to the section of the form that applies to self-identification of disability status.

Overview of This Information Collection

Type of Review: New collection.
Collection Title: Demographic Information on Applicants form.
Form No.: None.
Frequency of Report: Occasional.
Type of Respondent: Applicants for federal employment.
Description of Affected Public: Individuals submitting applications for federal employment.
Responses: 3,510,600.
Reporting Hours: 175,530 (3 minutes per response).
Costs to Respondents: None.
Federal Cost: None.
Abstract: EEOC enforces Title VII of the Civil Rights Act and the Rehabilitation Act, among other equal employment opportunity laws. Pursuant to its authority under those statutes, EEOC issued Equal Employment Opportunity Management Directive 715 (MD–715) in 2003. MD–715 provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII and effective affirmative action programs under Section 501 of the Rehabilitation Act. The overriding objective of MD–715 is to ensure that all employees and applicants for employment enjoy equality of opportunity in the federal workplace regardless of race, color, sex, age, national origin, religion, or disability. In order to ensure that agencies proactively prevent potential discrimination and establish systems to monitor compliance with Title VII and the Rehabilitation Act, MD–715 requires agencies to evaluate their employment practices by collecting and analyzing data on the race, national origin, sex, and disability status of applicants for both permanent and temporary employment. This notice concerns an optional form for use by federal agencies in gathering demographic information on applicants for federal employment. Use of the form is not required. Federal agencies may or may not elect to use the form. Applicants for federal employment may or may not elect to complete the form.

Burden Statement: The estimated number of respondents is approximately 3,510,600 applicants. The burden is estimated to be approximately three minutes per respondent. Because the form is voluntary, there is no way accurately to predict the number of applicants who will respond.

Dated: September 11, 2008.

For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E8–23069 Filed 9–30–08; 8:45 am]

BILLING CODE 6570–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice.

SUMMARY: The Farm Credit System Insurance Corporation (FCSIC or Corporation) is publishing its notice under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) (Pub. L. 107–174), as required by the No FEAR Act and 5 CFR 724. Under the No FEAR Act, agencies are required to notify employees, former employees, and applicants of their rights and remedies under Federal antidiscrimination and whistleblower protection laws applicable to them. The Office of Personnel Management (OPM) has published implementing regulations at 5 CFR 724, which require notice and training, and include model language for agency notices.

DATES: October 1, 2008

FOR FURTHER INFORMATION CONTACT: B. Jeffrey McGiboney, Equal Employment Opportunity Director, Farm Credit System Insurance Corporation, McLean, Virginia 22102–5090, (703) 883–4353, TTY (703) 883–4056, or James M. Morris, General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia 22102, (703) 883–4380, TTY (703) 883–4390.

SUPPLEMENTARY INFORMATION: For the reasons noted above, FCSIC is publishing this No FEAR Act Notice (also available at the Agency's Web site at (*http://www.fcsic.gov*).

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, title I, General Provisions, section 101(1).

The Act also requires this Agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging

discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.* , EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site (*http://www.eeoc.gov*) and the OSC Web site (*http://www.osc.gov*).

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: September 26, 2008.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E8–23085 Filed 9–30–08; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012051.

Title: CMA CGM–APL Space Charter Agreement.

Parties: CMA CGM, S.A.; American President Lines, Ltd.; and APL Co. Pte Ltd.

Filing Party: Draughn B. Arbona, Esq., Associate Counsel, CMA CGM (America) Inc., 5701 Lake Wright Drive, Norfolk, VA 23502–1858.

Synopsis: The agreement authorizes CMA to charter space to APL in the trade between U.S. East Coast ports and ports on the Mediterranean and Red Seas and on the Indian Subcontinent.

By Order of the Federal Maritime Commission.

Dated: September 26, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–23145 Filed 9–30–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Pacific Freights International, 56–361 Peawini Place, Kahuku, HI 96731. *Officers:* Epeli Katia, Managing Partner, (Qualifying Individual), Vilisoni Kotobalavu, CEO.

Dart Express (LAX) LLC, 821 W. Arbor Vitae Street, Inglewood, CA 90301. *Officers:* John J. Hafferty, Vice President, Edward M. Piza, Vice President, (Qualifying Individual).

ACS Logistics Inc., 5005 W. Royal Lane, Suite 198, Irving, TX 75063. *Officer:* George S. Jernigan, Asst. Secretary, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Agiloc International, Inc., 400 Oyster Point Boulevard, So. San Francisco, CA 94080. *Officers:* Bugiharto Suheman, CEO, (Qualifying Individual), Jubily Boy, Secretary.

Crane Worldwide Logistics LLC dba McLean Cargo Specialists, Incorporated, 16680 Central Green Blvd., Houston, TX 77032. *Officers:* Keith Winters, COO, (Qualifying Individual), John Magee, CEO.

Global Distribution and Logistics, LLC, 355 E. Harvard Circle, South Elgin, IL 60177. *Officer:* John J. Yarwood, Member, (Qualifying Individual).

Dart Express (SFO) LLC, 1162 Cherry Avenue, San Bruno, CA 94066. *Officers:* John J. Hafferty, Vice President, Edward M. Piza, Vice President, (Qualifying Individuals).

SDS Global Logistics, Inc., 52–09 31st Place, Long Island, NY 11101. *Officer:* Steve Soricillo, Vice President, (Qualifying Individual).

Dated: September 26, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–23143 Filed 9–30–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
019355NF	ABAD Air, Inc., 14011 N.W. 28th Street, Miami, FL 33172	July 2, 2008.
020273N	APA Logistics, LLC, 545 Dowd Avenue, Elizabeth, NJ 07201	July 10, 2008.
018305N	MC Logix, Inc., 18030 S. Figueroa Street, Gardena, CA 90248	August 12, 2008.
020303N	Panda Logistics USA, Inc., 19600 S. Alameda Street, Suite 1, E. Rancho Dominguez, CA 90221	August 15, 2008.
018234N	Savant International Logistics Ltd., 11 Broadway, Suite 1068, New York, NY 10004	July 12, 2008.
015847N	Straightline Logistics, Inc., One Cross Island Plaza, Suite 203–G, Rosedale, NY 11422	August 14, 2008.
021036F	Tiffany-Michele Nakano, dba Accord Relocations, 67 Lockheed Ave., Las Vegas, NV 89183	July 23, 2008.
020151F	United Global Logistics, LLC, 1139 E. Jersey Street, Ste. 417, Elizabeth, NJ 07201	July 2, 2008.
003615N	Unitrans Consolidated Inc., 180–02 Eastgate Plaza, Jamaica, NY 11434	August 10, 2008.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–23162 Filed 9–30–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 003676NF.
Name: Bax Global Inc. dba Bax Global Lines.
Address: 440 Exchange, Irvine, CA 92602.
Date Revoked: September 1, 2008.
Reason: Surrendered license voluntarily.

License Number: 017378F.
Name: E.M.W. Freight Forwarding Corp.
Address: 10300 Northwest 19th St., Ste. 104, Miami, FL 33172.
Date Revoked: September 5, 2008.
Reason: Failed to maintain a valid bond.

License Number: 019573N.
Name: Longron Corporation dba Time Logistics.
Address: 5415 Hilton Ave., Temple City, CA 91780.
Date Revoked: September 18, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003456F.
Name: Marli Shipping, Inc.
Address: 155 Algonquin Parkway, Whippany, NJ 07981.
Date Revoked: September 13, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003327NF.
Name: New Wave Logistics (USA) Inc. dba Double Wing Express.
Address: 2417 E. Carson Street, Ste. 200, Long Beach, CA 90810.
Date Revoked: September 2, 2008.
Reason: Surrendered license voluntarily.

License Number: 002328F.
Name: Ross Freight Company, Inc.
Address: 26302 So. Western Ave., #7, Lomita, CA 90717.
Date Revoked: September 19, 2008.
Reason: Failed to maintain a valid bond.

License Number: 018531NF.
Name: Saltair Projects, LLC dba Sunband Transport.
Address: 18900 8th Ave., So., Ste. 1100, Seatac, WA 98148.
Date Revoked: September 3, 2008.
Reason: Failed to maintain valid bonds.

License Number: 020403NF.
Name: Six Master International, Inc.
Address: 1971 W. 190th St., Ste. 150, Torrance, CA 90504.
Date Revoked: September 19, 2008.
Reason: Failed to maintain valid bonds.

License Number: 004395F.
Name: Superior Link International Inc.
Address: 380 S. Lemon Ave., Ste. G, Walnut, CA 91789.
Date Revoked: September 11, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003989F.
Name: Time Definite Services, Inc.
Address: 2551 Allan Drive, Elk Grove Village, IL 60007.
Date Revoked: September 21, 2008.
Reason: Failed to maintain a valid bond.

License Number: 021583NF.
Name: Trident Logistics Inc.
Address: 3 University Plaza, Ste. 405, Hackensack, NJ 07601.
Date Revoked: September 17, 2008.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E8–23154 Filed 9–30–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to extend through October 31, 2011, the current OMB clearance for the information collection requirements contained in its Negative Option Rule. That clearance expires on October 31, 2008.

DATES: Comments must be filed by October 31, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Negative Option Rule: FTC File No. P789003'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H-135, Annex J, 600 Pennsylvania Ave., NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1]

Comments filed in electronic form should be submitted via the following weblink: (*https://secure.commentworks.com/ftc-NegativeOptionpra2*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-NegativeOptionpra2*). If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Jock K. Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501-3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On July 10, 2008, the FTC sought comment on the information collection requirements pertaining to the Commission's Negative Option Rule (OMB Control Number 3084-0104).[2] No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Commission's Amplifier Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before October 31, 2008.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will ship merchandise, such as books, compact discs, or tapes, automatically and bill the subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such ''negative option'' plans.

Estimated annual hours burden: 13,000 hours rounded to the nearest thousand.

Staff estimates that approximately 158 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 11,850 hours (158 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 7 new clubs come into being each year. These clubs require approximately 120 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 840 hours. Combined with the estimated burden for established clubs, the total burden is 12,690 hours or 13,000, rounded to the nearest thousand.

Estimated annual cost burden: $511,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics found here: (*http://www.bls.gov/news.release/pdf/ocwage.pdf*), the average compensation for advertising managers is approximately $44 per hour. Compensation for office and administrative support personnel is approximately $15 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (e.g., placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately $510,510 [(65 hours managerial time x 158 existing clubs × $44 per hour) + (10 hours clerical time × 158 existing clubs × $15 per hour) + (110 hours managerial time × 7 new clubs × $44 per hour) + (10 hours clerical time × 7 new clubs × $15)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] 73 FR 39700.

that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

David C. Shonka,

Acting General Counsel.

[FR Doc. E8–23036 Filed 9–30–08: 8:45 am]

[Billing code: 6750–01–S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board; Notification of a Public Teleconference

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public teleconference. The meeting is open to the public.

DATES: The NBSB will hold a public teleconference on October 14, 2008. The teleconference will be held from 10 a.m. to 11 a.m. EST. Public Conference Call-in Number is available by contacting CAPT Leigh Sawyer (see below). Participants will be asked to provide their name, title, and organization.

ADDRESSES: The conference will be conducted by phone.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference should contact CAPT Leigh A. Sawyer, D.V.M., M.P.H., Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, e-mail at: *leigh.sawyer@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

Background: The purpose of the October 14, 2008 teleconference is to discuss recommendations from the Personal Preparedness Working Group and to ensure the public is provided opportunity to be involved in the deliberative process of the Board on personal preparedness issues that will specifically impact the Nation. The recommendations will include suggestions for evaluation of the pre-positioning of Med-Kits for use following an exposure to anthrax. A special meeting of the Board is being convened to assure that the public is given the opportunity to provide comments on the proposed recommendations. There will be time for members of the public to present their comments to the Board on this subject matter.

Availability of Materials: The agenda and other materials will be posted on the NBSB Web site at *http://www.hhs.gov/aspr/omsph/nbsb/index.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the NBSB to consider.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public NBSB teleconference will be limited to three minutes per speaker, with no more than a total of 20 minutes for all speakers. To be placed on the public speaker list, you should notify the operator when you enter the call-in number.

Dated: September 26, 2008.

William C. Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E8–23144 Filed 9–29–08; 11:15 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement (PA) 07–318

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 10 a.m.–12 p.m., November 3, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of Member Conflict Review, PA 07–318.

Contact Person for More Information: Price Connor, Ph.D., Scientific Review Official, National Institute for Occupational Safety and Health, CDC, 2400 Century Center, Atlanta, GA 30333, Telephone (404) 498–2511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 22, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–23098 Filed 9–30–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; CMS Computer Match No. 2008–02 HHS Computer Match No. 0602

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice establishes a computer matching agreement between

CMS and the Department of Defense (DoD). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. The Privacy Act requires that CMS provide an opportunity for interested persons to comment on the proposed matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. *See* ''Effective Dates'' section below for comment period.

DATES: *Effective Dates:* CMS filed a report of the Computer Matching Program (CMP) with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on *09–24–2008*. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication, whichever is later.

ADDRESSES: The public should address comments to: Walter Stone, CMS Privacy Officer, Division of Privacy Compliance (DPC), Enterprise Architecture and Strategy Group (EASG), Office of Information Services (OIS), CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.—3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Walter Stone, CMS Privacy Officer, Division of Privacy Compliance (DPC), Enterprise Architecture and Strategy Group (EASG), Office of Information Services (OIS), CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: September 23, 2008.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2008–02

HHS Computer Match No. 0602

NAME:

''Disclosure of Enrollment and Eligibility Information for Military Health System Beneficiaries Who are Medicare Eligible.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS); and Department of Defense (DoD), Manpower Data Center (DMDC), Defense Enrollment and Eligibility Reporting System Office (DEERS), and the Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity (TMA).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) § 552a), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988), the Office of Management and Budget (OMB) Circular A–130, titled ''Management of Federal Information Resources'' at 61 **Federal Register** (FR) 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

Prior to 1991, CHAMPUS entitlement terminated when any individual became eligible for Medicare Part A on a non-premium basis. The National Defense Authorization Act(s) (NDAA) for Fiscal Years (FY) 1992 and 1993 (Pub. L. 102–190) § 704, provide for reinstatement of CHAMPUS as second payer for beneficiaries entitled to Medicare on the basis of disability/End Stage Renal Disease (ESRD) only if they also enroll in Part B.

This agreement implements the information matching provisions of the NDAA, FY 2001 (Pub. L. 106–398) Sections 711 and 712; the NDAA, FY 1993 (Pub. L. 102–484) Section 705; and the NDAA, FY 1992 (Pub. L. 102–190) Sections 704 and 713.

Section 732 of the FY 1996 NDAA (Pub. L. 104–106), directed the administering Secretaries to develop a mechanism for notifying beneficiaries of their ineligibility for CHAMPUS when loss of eligibility is due to disability status.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards and procedures under which CMS will disclose Medicare enrollment information to the DoD, DMDC, DEERS, and Health Affairs/TMA. The disclosure by CMS will provide TMA with the information necessary to determine if Military Health System (MHS) beneficiaries (other than dependents of active duty personnel), who are Medicare eligible, are eligible to receive continued military health care benefits. This disclosure will provide TMA with the information necessary to meet the Congressional mandate outlined in legislative provisions in the NDAA listed above.

Current law requires TMA to discontinue military health care benefits to MHS beneficiaries who are Medicare eligible and under the age of 65 when they become eligible for Medicare Part A because of disability/ESRD unless they are enrolled in Medicare Part B. Current law also requires TMA to provide health care and medical benefits to MHS beneficiaries who are Medicare eligible (commonly referred to as the dual eligible population) over the age of 65 who are enrolled in the supplementary medical insurance program under Part B of the Medicare program. This CMA will combine both groups of the MHS beneficiary population described above into one

single database to more effectively carry out this matching program. In order for TMA to meet the requirements of current law, CMS agrees to disclose certain Part A and Part B enrollment data on this dual eligible population, which will be used to determine a beneficiary's eligibility for care under CHAMPUS/TRICARE. DEERS will receive the results of the computer match and provide the information to TMA for use in its matching program.

This computer matching agreement supersedes all existing data exchange agreements between CMS and DMDC applicable to the exchange of personal data for purposes of disclosing enrollment and eligibility information for MHS beneficiaries who are Medicare eligible.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

DEERS will furnish CMS with an electronic file on a monthly basis extracted from the DEERS' systems of records containing social security numbers (SSN) for all MHS beneficiaries who may also be eligible for Medicare benefits. CMS will match the DEERS finder file against its ''Medicare Beneficiary Database'' system of records (System No. 09–70–0536), and will validate the identification of the beneficiary and provide the Health Insurance Claim Number that matches against the SSN and date of birth provided by DEERS, and also provide the Medicare Part A entitlement status and Part B enrollment status of the beneficiary. CMS's data will help TMA to determine a beneficiary's eligibility for continued care under TRICARE. DEERS will receive the results of the computer match and provide the information provided to TMA for use in its program.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

DoD will use the SOR identified as S322.50, entitled ''Defense Eligibility Records,'' at 69 **Federal Register** (FR) 33376 (June 15, 2004), as amended by 69 FR 67118 (November 16, 2004). SSNs of DoD beneficiaries will be released to CMS pursuant to the routine use set forth in the system notice, which provides that data may be released to HHS ''for support of the DEERS enrollment process and to identify individuals not entitled to health care.''

Identification and Medicare status of DoD eligible beneficiaries will be provided to TMA to implement the statutory program. Therefore, eligibility information may also be maintained in the SOR identified as DHA 07, entitled ''Military Health Information System (MHIS),'' at 70 FR 44574 (August 3, 2005).

The release of the data for CMS is covered under the ''Enrollment Database,'' System No. 09–70–0502 published in the **Federal Register** at 73 FR 10249 (February 26, 2008). Matched data will be released to DEERS pursuant to the routine use number 2 as set forth in the system notice.

INCLUSIVE DATES OF THE MATCH:

The Matching Program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be renewed for an additional 12 month period as long as the statutory language for the match exists and other conditions are met.

[FR Doc. E8–23080 Filed 9–30–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0499]

Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of Sections 222, 223, and 224 of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirement established by Title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) that device establishments must submit registration and listing information by electronic means, using FDA Form 3673, unless the Secretary of the Department of Health and Human Services (the Secretary) grants them a waiver from the electronic submission requirement.

DATES: Submit written or electronic comments on the collection of information by December 1, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Implementation of Sections 222, 223, and 224 of the Food and Drug Administration Amendments Act of 2007 (OMB Control Number 0910–0625)—Extension

Sections 222, 223, and 224 of FDAAA, which were in effect on October 1, 2007, require that device establishment registrations and listings under section 510 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360), (including the submission of updated information), be submitted to the Secretary by electronic means, unless the Secretary grants a request for waiver of the requirement because the use of electronic means is not reasonable for the person requesting the waiver. FDA expects 20,000 to 30,000 device establishments to begin registering electronically at that time.

Section 222 of FDAAA amends sections 510(b) of the FD&C Act to require domestic establishments to register annually during the period beginning October 1 and ending December 31 of each year. Section 222 of FDAAA also amends section 510(i)(1) of the FD&C Act to require foreign establishments to register immediately upon first engaging in one of the covered device activities described under the statute, and in addition, they must also register annually during the time period beginning October 1 and ending December 31 of each year. Further, section 223 of FDAAA amends section 510(j)(2) of the FD&C Act to require establishments to list their devices with FDA annually, during the time period beginning October 1 and ending December 31 of each year.

Under FDAAA, device establishment owners and operators are required to keep their registration and device listing information up-to-date using the agency's new electronic system. Owners and operators of new device establishments must use the electronic system to create new accounts, new registration records, and new device listings. Section 224 of FDAAA amends section 510(p) of the FD&C Act by allowing an affected person to request a waiver from the requirement to register electronically when the ''use of electronic means'' is not reasonable for the person.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the 2007 Amendments	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
222[2]	3673	2,600	1	2,704	0.5	1,352
223[2]	3673	24,382	1	24,382	0.25	6,095
224[2]		29,370	1	29,370	0.75	22,028
224[3]		2,600	1	2,600	0.5	1,300
224 (waiver request)[2]		20	1	20	1	20
224 (waiver request)[3]		1	1	1	1	1
Total Hours						30,796

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time burden.
[3] Annual increase in burden.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Section of the 2007 Amendments	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
222[2]	33,490	1	29,900	.25	7,475
223[2]	16,524	4	66,096	.5	33,048
Total Hours					40,523

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Recurring burden.

The estimates in Table 1 of this document are based on FDA's experience, data from the device registration and listing database, and our estimates of the time needed to complete the previously required forms. We estimate that the time needed to enter registration and listing information electronically using FDA Form 3673 will not differ significantly from the time needed to fill in the paper forms (FDA Forms 2891, 2891a, and 2892) that previously were used for this purpose because the information required is essentially identical.

In addition, under section 224 of FDAAA, device establishment owner/operators, for whom registering and listing by electronic means is not reasonable, may request a waiver from the Secretary. Because a device establishment's owner/operator is required to register and list, they would need only to have access to a computer, Internet and an e-mail address for registration and listing by electronic means, the agency did not anticipate receipt of a large number of requests for waiver. For the first few months of operation of the web-based system, from

the October through December 2007 timeframe, FDA received fewer than 10 requests for waivers for the requirement to submit registration and listing information electronically. As data for more than 16,000 establishments have been received electronically for the same period, these requests amount to less than 1 percent of the total number of establishments that have responded.

Based on information taken from our databases, FDA estimates that there are 29,370 owner/operators who collectively register a total of 33,490 device establishments. The number of respondents listed for section 224 of FDAAA in Table 1 of this document is 29,370, which corresponds to the number of owner/operators who annually register one or more establishments. In addition, FDA estimates that 4,988 owner/operators are initial importers who must register their establishments but who, under FDA's existing regulations, are not required to list their devices unless they initiate or develop the specifications for the devices or repackage or relabel the devices. The number of respondents included in Table 1 of this document for section 223 of FDAAA is 24,382, which corresponds to the number of owner/operators who annually list one or more devices (29,370 - 4,988 = 24,382).

To calculate the burden estimate for waiver requests under section 224 of FDAAA, we assume as stated previously, that less than one-tenth of 1 percent of the 33,490 total device establishments would request waivers from FDA. This means the total number of waiver requests would probably not exceed 20 requests (33,490 x 0.0006). We also estimate that the one-time burden on these establishments would be an hour of time for a mid-level manager to draft, approve, and mail a letter. In addition, FDA estimates the total number of establishments will increase by 2,600 new establishments each year. Of the 2,600 new registrants each year, we assume that less than 1 percent (i.e., 1) of these will also request waivers each year. The total, therefore, is 21 waiver requests, which could increase by only one additional request each year.

The burden estimate for recordkeeping requirements under section 222 of FDAAA in Table 2 of this document, complies with the requirement that owners or operators keep a list of officers, directors, and partners for each establishment. Owners or operators will need to provide this information only upon request from FDA. However, it is assumed that some effort will need to be expended for keeping such lists current.

The burden estimate for the recordkeeping requirements under section 223 of FDAAA in table 2 of this document reflect other recordkeeping requirements for devices listed with FDA, and the requirement to provide these records upon request from FDA. These estimates are based on FDA experience.

Dated: September 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–22989 Filed 9–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0512]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Humanitarian Use Devices.

DATES: Submit written or electronic comments on the collection of information by December 1, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814 (OMB Control Number 0910–0332)—Extension

This collection of information implements the humanitarian use device (HUD) provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and subpart H, part 814 (21 CFR part 814). Under section 520(m) of the act, FDA is authorized to exempt a HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless an exemption is granted, because there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose the disease

or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury with the probable benefit to health from using the device outweighing the risk of injury or illness from its use. This takes into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) exempt a HUD from the effectiveness requirements under sections 514 and 515 of the act, provided that the device meets requirements set forth under section 520(m) of the act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of a HUD is in compliance with the HUD provisions under section 520(m) of the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	14	1	14	40	560
814.104	6	1	6	320	1,920
814.106	6	2	12	50	600
814.108	32	1	32	80	2,560
814.116(e)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.24(b)	4	1	4	2	8
814.126(b)(1)	45	1	45	120	5,400
Total					11,054

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
814.126(b)(2)	45	1	45	2	90
Total					90

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents in Tables 1 and 2 of this document are an average from data for the previous 3 years, i.e., FY 2005–2007. The number of annual reports submitted under § 814.126(b)(1) in Table 1 reflects an increase to 45 respondents with approved HUD applications. Likewise, under § 814.126(b)(2) in Table 2, the number of recordkeepers increased to 45.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: September 25, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–22991 Filed 9–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0506]

Determination That ATROVENT (Ipatropium Bromide) Inhalation Solution and 10 Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 11 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term

Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR § 10.25(a) and § 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 20–228 for ATROVENT (ipratropium bromide) Inhalation Solution in the **Federal Register** of November 7, 2007 (72 FR 62858).)

Application No.	Drug	Applicant
NDA 20–228	ATROVENT (ipratropium bromide) Inhalation Solution, 0.02%	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368
NDA 20–306	Fludeoxyglucose F–18 (4–40 millicuries (mCi)/milliliter (mL) and 4–90 mCi/mL) Injection	Downstate Clinical PET Center, Methodist Medical Center, 112 Crescent Ave., Peoria, IL 61606
NDA 20–333	AGRYLIN (anagrelide hydrochloride (HCl)) Capsules, equivalent to (EQ) 1 milligram (mg) base	Shire US Inc., 725 Chesterbrook Blvd., Wayne, PA 19087–5637
NDA 20–377	CORDARONE (amiodarone HCl) Injection, 50 mg/mL	Wyeth Pharmaceuticals, P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 20–974	PROZAC (fluoxetine HCl) Tablets, EQ 10 mg base	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285
NDA 50–417	NEOSPORIN (bacitracin zinc; neomycin sulfate; polymyxin B sulfate) Ophthalmic Ointment, 400 units/gram (g); EQ 3.5 mg base/g; 10,000 units/g	Monarch Pharmaceuticals, Inc., c/o King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620
NDA 50–461	ANCEF (cefazolin sodium) Injection, 250 mg/vial, 500 mg/vial, and 5 g/vial	GlaxoSmithKline, 2301 Renaissance Blvd., King of Prussia, PA 19406
NDA 50–521	CECLOR (cefaclor) Capsules, EQ 250 mg and 500 mg base	Eli Lilly and Co.
NDA 50–522	CECLOR (cefaclor) Oral Suspension, EQ 125 mg base/5 mL and EQ 250 mg base/5 mL	Do.
NDA 50–527	DURICEF (cefadroxil) Oral Suspension, EQ 125 mg base/5 mL	Warner Chilcott, Inc., Rockaway 80 Corporate Center, 100 Enterprise Dr., suite 280, Rockaway, NJ 07866
ANDA 61–229	POLYSPORIN (bacitracin zinc; polymyxin B sulfate) Ophthalmic Ointment, 500 units/g; 10,000 units/g	Monarch Pharmaceuticals, Inc.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued

marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: September 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–23035 Filed 9–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0484]

Preparation for International Conference on Harmonization Meetings in Brussels, Belgium; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is announcing a correction to the notice of a public meeting entitled ''Preparation for International Conference on Harmonization Meetings in Brussels, Belgium; Public Meeting.'' This meeting was announced in the **Federal Register** of September 16, 2008 (73 FR 53428). The correction is being made to reflect changes in the *Summary*, *Date and Time*, *Location*, *Contact Person*, *Background*, and *Agenda* portions of the document.

FOR FURTHER INFORMATION CONTACT: Tammie Jo Bell, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by email: *Tammie.Bell2@fda.hhs.gov* or fax: 301–827–0003.

SUPPLEMENTARY INFORMATION: The FDA is correcting a notice published in the **Federal Register** of September 16, 2008 (73 FR 53428), announcing a meeting entitled ''Preparation for International Conference on Harmonization Meetings in Brussels, Belgium.'' This corrected notice is being published in its entirety:

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for International Conference on Harmonization Meetings in Brussels, Belgium'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Brussels, Belgium. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Brussels, Belgium, November 10 to 13, 2008, at which discussion of the topics underway and the future of ICH will continue, as well as provide comprehensive updates of the various ICH topics.

Date and Time: The meeting will be held on Tuesday, October 21, 2008, from 2:30 p.m. to 5:30 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3rd floor, Conference Rooms D and E, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 2:15 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to Conference Rooms D and E.

Contact Person: All participants must register with Tammie Jo Bell, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by email: *Tammie.Bell2@fda.hhs.gov* or fax: 301–827–0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material, and requests to make oral presentation, to the contact person by October 14, 2008.

If you need special accommodations due to a disability, please contact Tammie Jo Bell at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–66, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Background: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor and Welfare; the Japanese Pharmaceutical Manufactures Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by October 14, 2008, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses, phone number, fax, and email of proposed participants, and an indication of the approximate time requested to make their presentation.

Agenda: The agenda for the public meeting will be made available via the internet at *http://www.fda.gov/cder/meeting/ICH_20081021.htm*.

Dated: September 26, 2008.

Jeffrey Shuren,

Asssociate Commissioner for Policy and Planning.

[FR Doc. E8–23120 Filed 9–30–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0043]

[FDA No. 225–08–8004]

Memorandum of Agreement Between the Food and Drug Administration, the National Cancer Institute, a Part of the National Institutes of Health, and the CRIX International Association

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration FDA) is providing notice of a memorandum of agreement (MOA) between FDA, the National Cancer Institute (NCI) and CRIX International Association. The purpose of the MOA is to establish a public-private partnership to pilot the use of a nonprofit organization to manage the production instance of the Federal Investigator Registry of Biomedical Information Research Data (FIREBIRD) system as a vehicle for secure, rapid and efficient electronic exchange of clinical investigator credentialing information among clinical investigators at trial sites, sponsors (including NCI), and FDA; and to continue the development of FIREBIRD to fulfill the requirements of FDA and sponsors (including the NCI).

DATES: The agreement became effective August 28, 2008.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Director for Health and Regulatory Data Standards (HF–18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7784;

George Komatsoulis, Chief Operating Officer, Center for Bioinformatics, National Cancer Institute, 8800 Rockville Pike, Bethesda, MD 20892–8505, 301–451–2881; and

James L. Bland, Project Officer, CRIX International Association, 1195 Freedom Dr., Reston, VA 20190, 703–577–8788.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOA.

Dated: September 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

BILLING CODE 4160–01–S

FDA Record NO. 225-08-8004

MEMORANDUM OF AGREEMENT
between the
U. S. FOOD AND DRUG ADMINISTRATION
the
NATIONAL CANCER INSTITUTE,
a part of the
THE NATIONAL INSTITUTES OF HEALTH,
and
CRIX INTERNATIONAL

WHEREAS, the U.S. Department of Health and Human Services, Food and Drug Administration ("FDA"), an agency of the Federal Government, is charged by Congress with protecting the public health by ensuring the safety, efficacy, and security of drugs, biological products, and medical devices, and is also responsible for advancing the public health by helping to speed innovations that lead to safer and more effective products under its jurisdiction;

WHEREAS, given its statutory obligations to regulate and monitor clinical investigators and the conduct of clinical trials in support of new medical product applications and unique perspectives on medical product research and development activities and in-depth understanding of clinical trial design, regulatory policy, and scientific expertise in evaluating new medical products, the FDA is interested in the development of a fully electronic submissions process for new medical product applications that enables rapid and efficient electronic exchange of regulatory data among the FDA, clinical investigators and sponsors from industry and government ("Sponsors");

WHEREAS, the U.S. Department of Health and Human Services, National Cancer Institute ("NCI"), a component of the National Institutes of Health and an agency of the Federal Government, is charged by Congress with leading the nation's efforts for cancer research and training and, in service of its mission, seeks to improve quality of care and outcomes by utilizing personalized medicine to drive the selection of medications, therapies or preventive measures that are particularly suited to individual patients at the time of administration;

WHEREAS, in recognition of the importance of using biomedical informatics and information technology to realize the promise of next generation developments in biomedicine, in 2003 the NCI launched the cancer Biomedical Informatics Grid™ ("caBIG™"), an electronic, standards-based infrastructure for sharing data, tools, and other resources among individuals, and organizations in an effort to speed the development of innovative approaches for the prevention and treatment of cancer;

WHEREAS, the NCI and the FDA are interested in exploring the use of an electronic infrastructure for the management of regulatory data submissions in order to help reduce the delays, errors, and costs associated with drug development and speed the discovery and delivery of new therapies, not just for cancer, but for all diseases;

WHEREAS, CRIX International Association (CRIX), a privately funded, not-for-profit corporation composed of board representation from public, private, and sponsor institutions, and located at 11951 Freedom Drive, 13th Floor, Reston, Virginia 20190, is dedicated to leveraging technology to provide and govern a collaborative electronic platform to share information and documents related to clinical research and medical product development between sponsors of new medical products, their business partners, research institutions, academia and health authorities involved in bringing new therapies to patients throughout the world.

NOW THEREFORE, in consideration of the foregoing, and intending to be legally bound hereby, FDA, NCI, and CRIX (hereafter referred to as the Parties) covenant and agree as follows:

I. Purpose

The purpose of this MOA is to establish a public-private partnership between the Parties to pilot the use of a nonprofit organization to: (i) manage a production instance of the FIREBIRD system (described below in Article II) as a vehicle for secure, rapid and efficient electronic exchange of clinical investigator credentialing information among clinical investigators at trial sites, Sponsors (including the NCI) and the FDA; and (ii) continue development of FIREBIRD to fulfill the requirements of FDA and Sponsors (including the NCI).

Activities to be undertaken pursuant to this MOA will include:

1. Completion of the documentation of requirements for further development of FIREBIRD with respect to the submission of clinical investigator data
2. Further development and testing of FIREBIRD to fulfill the requirements of FDA and Sponsors
3. Deployment and migration of existing data to a production system for submission of clinical investigator data
4. Assessment of the ability of a nonprofit entity to manage a production system of FIREBIRD on a long-term basis in the context of a central system for investigator credentialing information

Responsibilities for performance of these activities are set forth below in Section IV.

II. Background

The NCI, in collaboration with the FDA, initiated development and implementation of the Federal Investigator Registry of Biomedical Information Research Data ("FIREBIRD"), a software application to manage and share clinical investigator credentialing information between Sponsors,

clinical investigators, and FDA via a secure electronic infrastructure, under MOA No. 225-06-8402 between the FDA and the NCI. FIREBIRD is one of several software modules under development as part of an NCI effort in its Center for Biomedical Informatics and Information Technology (CBIIT) to facilitate the exchange of clinical research information. Once implemented, FIREBIRD is designed to enable Sponsors (including the NCI) and the FDA to manage clinical investigator information, required by the FDA to be documented on FDA Form 1572, electronically in a fully secure manner. Although the NCI is currently using a production-grade instance of FIREBIRD in certain NCI-sponsored clinical trials, the development of FIREBIRD is ongoing, and several requirements have yet to be implemented.

Information in the production FIREBIRD system to be hosted and managed by CRIX (the "Production FIREBIRD System") falls into two categories, which, for the purposes of this MOA, are referred to as "FDA records" and "non-FDA records:"

"FDA records" refers to any information entered into the Production FIREBIRD System by or on behalf of FDA, as well as any information, regardless of who enters it into the Production FIREBIRD System, once it is electronically submitted to FDA. In order for any information entered into the Production FIREBIRD System by a Sponsor, including the NCI, or a clinical investigator to become an "FDA record," the system requires the submitter, whether the Sponsor or clinical investigator, to take an affirmative step to acknowledge the fact that the data are now accessible by the FDA. Such an acknowledgment is considered a submission to the FDA. Once submitted to the FDA, the information becomes available to the FDA and becomes an FDA record. Thereafter, only the FDA has access to "FDA records." Information entered into the Production FIREBIRD System by or on behalf of FDA resides only in the "FDA records" component of the system. The Production FIREBIRD System is designed to accommodate requests for access to data that are made available by the FDA to the public, in accordance with Section VI.A below.

"Non-FDA records" are any information not entered into the Production FIREBIRD System by or on behalf of FDA, as well as information entered into the Production FIREBIRD System by a sponsor or clinical investigator prior to taking the affirmative step that constitutes submission to FDA.

III. Adherence to caBIG Software Development Principles and Methodologies

FIREBIRD adheres to the caBIG™ principles of open source, open access, open development, and federation and is compatible with caBIG™ technical standards. The Parties agree that any further developments, enhancements, modifications or extensions ("Improvements") of FIREBIRD will adhere to caBIG™ software development principles and methodologies, including architecture specification, use of open, non-proprietary standards and an open, governed defined strategy for change management and evolution of the product, as follows:

A. Architecture Specification

Functionality must be defined as business-level services, vetted appropriately by stakeholders, and implemented in a Services-Oriented Architecture, in compliance with methodologies for

application and services specifications established by NCI CBIIT. Compliance with this specification will generate the ability to bind the FIREBIRD implementation to more than one technology, provide published interfaces for both human and automated interaction with FIREBIRD, and define quantitative conformance and compliance metrics for all implementations and instances.

B. Use of Standards

Implementation must be based on non-proprietary standards including those defining static meta-data/information semantics (*e.g.*, the BRIDG Model, the HL7 Clinical Document Architecture (CDA R2)), standardized data semantics (*i.e.*, standardized terminologies such as MeDRA, LOINC, etc.), and standardized data types (*e.g.*, HL7 Version 3 Abstract Data Types (ADT R2)). In addition, the Services-Oriented Architecture implementation of FIREBIRD must use non-proprietary, open standards (*e.g.* those developed by OASIS, W3C, etc.) that are required. Closed and/or proprietary implementation technologies must not be used. All new releases of FIREBIRD must be determined by NCI, prior to distribution, to conform to the caBIG™- Compatibility Guidelines (https://cabig.nci.nih.gov/guidelines_documentation/) at the Silver or Gold level and reviewed annually thereafter by NCI for continued compliance.

C. Change Management/Evolution Strategy

A clearly defined, open, accountable, and version-managed change control process must be in place in order to enable timely bug fixes and relevant requirements changes, additions, or enhancements to be made, which process shall include logging and tracking of requests. This process must take place within an open, community-based framework that ensures that stakeholders have a voice in the direction of Improvements to FIREBIRD over time.

IV. Responsibilities of the Parties

The specific responsibilities of the Parties to this MOA are as follows:

A. NCI Responsibilities

- NCI will inform CRIX of all necessary interoperability and data standards requirements.
- Upon receipt from CRIX of all required documentation, NCI will conduct compatibility reviews of each new release of FIREBIRD prior to distribution to assess compliance with the caBIG Compatibility Guidelines and will supply mentors to work with CRIX to enable FIREBIRD to adhere to these guidelines.
- NCI will make recommendations to FDA and CRIX regarding security and NCI end-user requirements for FIREBIRD.

B. FDA Responsibilities

- FDA will make recommendations to NCI and CRIX regarding security and FDA end-user requirements.

- FDA will work with NCI and CRIX to enable FIREBIRD to fulfill all necessary security and FDA end-user requirements.
- FDA will develop a transition plan to migrate FDA's system of current clinical investigator data records to the Production FIREBIRD System, which is intended to become FDA's repository for storing and accessing clinical investigator data required under 21 CFR 312.
- FDA staff will enter into the Production FIREBIRD System relevant clinical investigator-related data submitted directly to FDA as well as other data generated by FDA (e.g., completed inspection dates and disqualification determinations).
- FDA will encourage sponsors and clinical investigators to use the Production FIREBIRD System to submit appropriate information to FDA, including data required to be submitted pursuant to 21 CFR 312.

C. CRIX Responsibilities

- CRIX will provide and manage the Production FIREBIRD System to enable electronic exchange of clinical investigator information, and will be responsible for defining all necessary security requirements.
- CRIX will gather and complete the requirements for Improvements to FIREBIRD with input and review from, but not limited to, Sponsors, medical professional communities, the FDA, and the NCI.
- CRIX will conduct a pilot for hosting and managing the Production FIREBIRD System.
- CRIX will make Improvements to FIREBIRD in compliance with caBIG interoperability and data standards requirements and will submit each new release of FIREBIRD to NCI, prior to distribution, for assessment of compliance with the caBIG™ Compatibility Guidelines. CRIX will be responsible for submitting current releases for review annually to facilitate continued compliance with caBIG™ standards.
- CRIX will offer the NCI and the FDA separate seats on the CRIX Board of Directors.

D. The Parties acknowledge and agree that the consideration for this agreement between the Government and CRIX is specified in Sections IV.A, IV.B, and IV.C of this agreement.

V. Liaison Officers

Randy Levin
Director for Health and Regulatory Data Standards
Food and Drug Administration
Tel: 301-827-7784

FDA Record NO. 225-08-8004

George Komatsoulis
Chief Operating Officer
Center for Bioinformatics
National Cancer Institute
Tel: 301-451-2881

James L. Bland
Project Officer
CRIX International Association
Tel: 703-577-8788

VI. General Provisions

A. Information-Sharing and Records Retention

The FDA, the NCI and CRIX recognize that records in the Production FIREBIRD System will contain information that needs to be protected from unauthorized disclosure. Such information includes: (1) confidential commercial information, such as the information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (e.g., Trade Secrets Act (18 U.S.C. § 1905), the Privacy Act (5 U.S.C. 552a), the Freedom of Information Act (5 U.S.C. § 552), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.

The FDA and CRIX further recognize that, because FDA records will be stored in the Production FIREBIRD System and managed by CRIX, a separate legally binding agreement is necessary to ensure that CRIX adheres to FDA's records retention schedule and that FDA records are protected from unauthorized disclosure, pursuant to existing federal statutes as described above. FDA and CRIX agree to develop and finalize such an agreement before FDA records are stored in the Production FIREBIRD System.

B. Intellectual Property

CRIX shall ensure that all Improvements to FIREBIRD, which include source code, binary object code and related documentation, that are made in connection with activities carried out under the terms of this MOA by CRIX, or its grantees, contractors or subcontractors, will be made available under the following conditions:

1. CRIX hereby grants, and will ensure that its grantees contractors and subcontractors grant, to the Government and the public a nonexclusive, worldwide, perpetual, fully paid up, no-charge, irrevocable, transferable and royalty-free right and license in its rights in all Improvements to FIREBIRD, including any copyright or patent rights therein, to: (i) use, install, disclose, access, operate, execute, reproduce, copy, modify, translate, market, publicly display, publicly perform, and prepare derivative works of the

Improvements to FIREBIRD in any manner and for any purpose, and to have or permit others to do so; (ii) make, have made, use, practice, sell, offer for sale, import, and/or otherwise dispose of Improvements to FIREBIRD (or portions thereof); (iii) distribute and have distributed to and by third parties Improvements to FIREBIRD and any modifications and derivative works thereof; and (iv) sublicense the foregoing rights set out in (i), (ii) and (iii) to third parties, including the right to license such rights to further third parties.

2. End-user documentation included with the redistribution, if any, of Improvements to FIREBIRD must include the following acknowledgment: "This product includes software developed by _____." <Insert name of any organization conducting activities under this MOA, directly or indirectly.> If there is no end-user documentation, such acknowledgment shall appear in the Improvements to FIREBIRD itself, wherever such third-party acknowledgments normally appear.

3. The names "The National Cancer Institute", "NCI", "Cancer Bioinformatics Grid" or "caBIG™" "CRIX International", and "CRIX" shall not be used by CRIX, its grantees, contractors or subcontractors, or their end-users, to endorse or promote products derived from Improvements to FIREBIRD. CRIX, its grantees, contractors or subcontractors, and their end-users, are expressly not authorized by this MOA to use any trademarks, service marks, trade names, logos or product names of the FDA, the NCI, or CRIX. It is understood that such use may be permitted under separate license agreements granted by each of the Parties with respect to their trademarks.

4. For sake of clarity, and not by way of limitation, CRIX, its grantees, contractors and subcontractors may incorporate Improvements to FIREBIRD into their proprietary programs and into any third party proprietary programs. However, they must agree that, if they incorporate Improvements to FIREBIRD into third party proprietary programs, they are solely responsible for obtaining any permission from such third parties required to incorporate the Improvements to FIREBIRD into such third party proprietary programs and for informing their sublicensees, including without limitation their end-users, of their obligation to secure any required permissions from such third parties before incorporating the Improvements to FIREBIRD into such third party proprietary software programs.

5. For sake of clarity, and not by way of limitation, CRIX, its grantees, contractors and subcontractors may add their own copyright statement to portions of Improvements to FIREBIRD in which they have an interest, and they may provide additional or different license terms and conditions in their sublicenses of such interests, provided that their use, reproduction, and distribution of the Improvements to FIREBIRD otherwise complies with the conditions stated above.

6. Proprietary software shall not be used or delivered in the course of making Improvements to FIREBIRD under this MOA unless prior written permission is granted by the Parties to use or deliver such proprietary software and the terms of a license applicable to such proprietary software have been determined in advance. Any proprietary software that is delivered with such permission shall be segregated from all Improvements to FIREBIRD that modifies or extends such proprietary software and is delivered in performance of activities under this MOA or, if it is not, the entire product, consisting of both the proprietary software, including source code, binary object code and any related documentation, and the Improvements to FIREBIRD, shall be subject to the terms of this Section. CRIX shall be responsible for obtaining the rights set forth above to proprietary software owned or controlled by third parties that is used or delivered in performance of activities under this MOA. Modifications or extensions of proprietary software that are not funded, developed or used in connection with the activities conducted under this MOA are not subject to the provisions of this Section.

7. All Improvements to FIREBIRD shall be provided or made available by CRIX, its grantees, contractors and subcontractors in accordance with all applicable federal and state legal, regulatory and policy requirements.

8. THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY REGARDING THE OWNERSHIP, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF FIREBIRD OR IMPROVEMENTS TO FIREBIRD. IN NO EVENT SHALL THE GOVERNMENT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS FIREBIRD OR IMPROVEMENTS TO FIREBIRD, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. No indemnification for any loss, claim, damage or liability is intended or provided by any party under this agreement. Each party shall be liable for any loss, claim, damage, or liability that said party incurs as a result of its activities under this agreement, except that the NIH and the FDA, as agencies of the United States, assume liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq.

C. Resource Obligations

The Parties agree that this MOA creates binding, enforceable obligations on the Parties. This MOA and all associated agreements, including such agreements that obligate resources, *e.g.*, contracts, grants and other collaborative agreements, will be subject to applicable policies,

rules, regulations and statutes under which the FDA, the NCI, and CRIX operate. The Parties further recognize that participation in or activity pursued under this MOA does not preclude any Party from continuing to pursue similar or other related activities in its own interest.

D. Notices

All written notices required in connection with activities under this MOA should be delivered by hand, sent by pre-paid courier or registered mail or transmitted by digitally signed email to the Liaison Officers listed in Section VI below.

E. Duration and Modification

This MOA shall become effective on the date of signature of each Party and shall remain in effect for two (2) years unless modified by the mutual agreement of the Parties upon sixty (60) days' notice in writing, or until such time as the Production FIREBIRD System and Improvements to FIREBIRD have been transferred to the FDA or a mutually agreed upon third party.

F. Termination

If any Party wishes to terminate this MOA, it may do so by giving 60 days' advance notice of its decision to the other Parties. Following termination, CRIX must ensure that records belonging to the other Parties remain accessible to the other Parties in a usable form until the records are transferred in a timely fashion to the other Parties. CRIX's obligations under Section VI.B of the MOA shall survive termination. The Parties agree that no monies shall be due to any Party in the event of a termination.

G. Choice of Law

United States law will apply to resolve any claim of breach of this contract, as well as the construction, validity, performance and effect of this MOA.

H. Disputes

This contract is subject to the The Contract Disputes Act of 1978, as amended (41 U.S.C.601-613). 48 CFR 52.333-1 ("Disputes") is hereby incorporated by reference into this agreement.

I. Severability

If any provision or provisions of this MOA shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

FDA Record NO. 225-08-8004

VII. SIGNATURES OF RESPONSIBLE PARTIES

We, the undersigned, agree to abide by the terms and conditions of this MOA.

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

Date 8/28/08

Frank M. Torti, M.D., MPH
Principal Deputy Commissioner &
Chief Scientist
U.S. Food and Drug Administration

APPROVED AND ACCEPTED FOR THE NATIONAL CANCER INSTITUTE

Date 08/15/08

John E. Niederhuber, M.D.
Director
National Cancer Institute

APPROVED AND ACCEPTED FOR CRIX INTERNATIONAL ASSOCIATION

Date: 8-4-2008

James L. Bland
Executive Director, CRIX

[FR Doc. E8–22992 Filed 9–30–08; 8:45 am]
BILLING CODE 4160–01–C

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, Developmental Disabilities, Communication and Science Education.

Date: October 24, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianb@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Cryopreservation of Cells and Cryopreservation Devices.

Date: October 24, 2008.

Time: 2 p.m. to 3 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: Neelakanta Ravindranath, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Techniques in Stem Cell Biology and Senescence-related Mechanisms and Devices.

Date: October 24, 2008.

Time: 3 p.m. to 5 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: Neelakanta Ravindranath, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Member Conflict: Inflammation and Cancer.

Date: October 30, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23054 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Training Program on Intellectual and Developmental Disabilities.

Date: October 27, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23094 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: October 27–28, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health & Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23095 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: October 28, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23096 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiology, Prevention and Control P01 II.

Date: October 27, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852.

Contact Person: Caron Lyman, PhD, Scientific Review Officer, Division Of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Blvd., Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants for Behavioral Research in Cancer Control.

Date: November 5–6, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rhonda J. Moore, PhD, Scientific Review Officer, Special Review And Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *moorerh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23114 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel, MIDAS Research (ZGM1 CBCB–5–MI).

Date: October 31, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mall.nih.gov*.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel, Minority Biomedical Research Support.

Date: October 31, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocmmai@nih.gov*.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel, Minority Biomedical Research Support Chemistry.

Date: November 3, 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: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific

Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3ANI8J, Bethesda, MD 20892, 301–594–2773.

(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: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23049 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Genomic Sequencing Centers for Infectious Diseases.

Date: October 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue-Name Change to Crowne Plaza, Silver Spring, MD 20910.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, RM 3266, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, lmmunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23050 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of AIDS and Alcohol-Related Grant Applications.

Date: December 4, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3039, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3039, Rockville, MD 20852 301–443–9737, *bautista@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23051 Filed 9–30–08; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee; Minority Programs Review Subcommittee A.

Date: October 30, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Mona R. Trempe, PhD., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov.*

(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: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23052 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Sex Hormones in Women and Diabetes.

Date: October 27, 2008.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23097 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: October 23–24, 2008.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Ernest W Lyons, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, Md 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: October 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

Name of Committee: Neurological Sciences Training Initial Review Group, NST–2 Subcommittee.

Date: October 27–28, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Joann Mcconnell, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–5324, *mcconnej@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: November 6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Carlyle Suites Hotel, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: November 20–21, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 23, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23128 Filed 9–30–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0968]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet on November 1, 2, and 3, 2008, in Arlington, VA. The meetings will be open to the public.

DATE: NBSAC will meet November 1, 2008, from 8 a.m. to 11:30 a.m. and on November 3, 2008, from 8:30 a.m. to 5 p.m. The Prevention through People subcommittee will meet November 1, 2008, from 1 p.m. to 5 p.m. The Recreational Boating Safety Strategic Planning subcommittee will meet November 2, 2008, from 8 a.m. to 12 noon. The Boats and Associated Equipment subcommittee will meet on November 2, 2008, from 1:30 p.m. to 5 p.m. Please note that the meetings may conclude early if the council has completed its business.

ADDRESSES: The meetings will be held at the Holiday Inn Arlington, 4610 N Fairfax Drive, Arlington, VA 22203. Please send written material, comments, and requests to make oral presentations to Mr. Jeff Ludwig by one of the submission methods described below. All written materials, comments, and

requests to make oral presentations at the meeting(s) should reach Mr. Ludwig by October 17, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting(s) should reach Mr. Ludwig by October 10, 2008. All materials, comments, and requests must be identified by docket number [USCG–2008–0968] and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail*: *jeffrey.a.ludwig@uscg.mil*. Include the docket number in the subject line of the message.
- *Fax*: (202) 372–1932.
- *Mail*: Mr. Jeff Ludwig, COMDT (CG–54221), 2100 2nd Street, SW., Washington, DC 20593.

Instructions: All submissions received must include the words ''U.S. Coast Guard'' and docket number [USCG–2008–0968]. All submissions received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or submissions received by the NBSAC, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, COMDT (CG–54221), 2100 2nd Street, SW., Washington, DC 20593; (202) 372–1061; *Jeffrey.a.ludwig@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). NBSAC was established by the Federal Boat Safety Act of 1971. That law requires the Secretary of Homeland Security, and the Commandant of the Coast Guard by delegation, to consult with NBSAC in prescribing Federal regulations, and on other major matters regarding boating safety. *See* 46 U.S.C. 4302(c) and 13110(c).

NBSAC will meet for the purpose of discussing issues related to recreational boating safety.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

Saturday, November 1, 2008

(1) Remarks—Mr. James P. Muldoon, NBSAC Chairman;

(2) Chief, Office of Auxiliary and Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(3) Executive Secretary's report.

(4) Chairman's session.

(5) TSAC Liaison's report.

(6) NAVSAC Liaison's report.

(7) National Association of State Boating Law Administrators report.

(8) Prevention through People Subcommittee meeting.

Sunday, November 2, 2008

(9) Recreational Boating Safety Strategic Planning Subcommittee meeting.

(10) Boats and Associated Equipment Subcommittee meeting.

Monday, November 3, 2008

(11) Prevention through People Subcommittee report.

(12) Boats and Associated Equipment Subcommittee report.

(13) Recreational Boating Safety Strategic Planning Subcommittee report.

A more detailed agenda can be found at: *http://www.uscgboating.org/nbsac/nbsac.htm*, after October 24, 2008.

NBSAC Subcommittees

Prevention Through People Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting the prevention of boating accidents through outreach and education of boaters.

Boats and Associated Equipment Subcommittee: Discuss current regulatory projects, grants, contracts, and new issues affecting boats and associated equipment.

Recreational Boating Safety Strategic Planning Subcommittee: Discuss current status of the strategic planning process and any new issues or factors that could impact, or contribute to, the development of the strategic plan for the recreational boating safety program.

Meeting Procedure

This meeting is open to the public. At the discretion of the Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Jeff Ludwig as described in the **ADDRESSES** section above. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit thirty (30) copies to Mr. Jeff Ludwig by October 10, 2008.

Please note that the meeting may conclude early if all business is finished.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig as described in the **ADDRESSES** section above as soon as possible.

Dated: September 17, 2008.

J.A. Watson,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E8–23034 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0989]

Cook Inlet Regional Citizens' Advisory Council Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public the Coast Guard has recertified the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) as an alternative voluntary advisory group for Cook Inlet, Alaska. This certification allows the CIRCAC to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by statute.

DATES: This recertification is effective for the period from September 1, 2008, through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: LT Ken Phillips, Seventeenth Coast Guard District (dpi), by phone at (907) 463–2821, or by mail at P.O. Box 25517, Juneau, Alaska 99802.

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732(o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the Coast Guard (see 57 FR 8582). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G-M) on March 19, 1992 (letter #5402).

On July 7, 1993, the Coast Guard published a policy statement, 58 FR

36504, to clarify the factors that will be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G-M), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the Coast Guard published a policy statement, 67 FR 58440, which changed the recertification procedures such that applicants are required to provide the Coast Guard with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

Discussion of Comments

On August 7, 2008, the Coast Guard published a ''Notice of availability; request for comments'' for recertification of Cook Inlet Regional Citizens' Advisory Council in the **Federal Register** (73 FR 46027). We received six letters commenting on the proposed action. No public meeting was requested, and none was held. Of the seven comments received, all were positive. Comments in support of the recertification consistently cited CIRCAC's broad representation of the respective communities' interests, appropriate actions to keep the public informed, improvements to both spill response preparation and spill prevention, and oil spill industry monitoring efforts that combat complacency—as intended by the Act.

Recertification

By letter dated September 12, 2008, the Commander, Seventeenth Coast Guard certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2009.

Dated: September 15, 2008.

Arthur E. Brooks,

Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. E8–23033 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2456–08; DHS Docket No. USCIS–2008–0034]

RIN 1615–ZA73

Extension of the Designation of El Salvador for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security has extended the designation of El Salvador for temporary protected status (TPS) for 18 months, from its current expiration date of March 9, 2009 through September 9, 2010. This Notice also sets forth procedures necessary for nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) with TPS to re-register with U.S. Citizenship and Immigration Services (USCIS). Unlike the prior extension of TPS for El Salvador, this Notice does not automatically extend previously-issued employment authorization documents (EADs). Eligible TPS beneficiaries must apply to USCIS for extensions of their EADs, and pay the required application fee for such extensions, during the 90-day registration period. Re-registration is limited to persons who have previously registered with USCIS for TPS under the designation of El Salvador and whose applications have been granted by or remain pending with USCIS. Certain nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have not previously applied to USCIS for TPS may be eligible to apply under the late initial registration provisions.

DATES: The extension of the TPS designation of El Salvador is effective March 10, 2009, and will remain in effect through September 9, 2010. The 90-day re-registration period begins October 1, 2008, and will remain in effect until December 30, 2008. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 90-day re-registration period beginning on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Shelly Sweeney, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*.

Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act.
ASC—USCIS Application Support Center.
DHS—Department of Homeland Security.
HSA—Homeland Security Act of 2002.
OSC—U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices.
EAD—Employment Authorization Document.
Secretary—Secretary of Homeland Security.
TPS—Temporary Protected Status.
USCIS—U.S. Citizenship and Immigration Services.

What Is Temporary Protected Status?

TPS is an immigration status DHS grants to eligible nationals of designated countries or part of a designated country. During the period for which the Secretary of Homeland Security (Secretary) has designated a country for TPS, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization. The granting of TPS does not lead to permanent resident status. When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have been obtained while registered for TPS.

What authority does the Secretary of Homeland Security have to extend the designation of El Salvador for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the government, to designate a foreign State (or part thereof) for TPS.[1]

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law No. 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice

The Secretary may then grant TPS to eligible nationals of that foreign State (or aliens having no nationality who last habitually resided in that State). Section 244(a)(1)(A) of the Act; 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultations with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, must determine the length of an extension of the TPS designation. Sections 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). If the Secretary determines that the foreign State no longer meets the conditions for the TPS designation, he must terminate the designation. Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a (b)(3)(B).

The Secretary's determination to designate a country for TPS, or to extend or terminate such designation, is not subject to judicial review. Section 244(b)(5) of the Act, 8 U.S.C. 1254a(b)(5)(A).

Why was El Salvador initially designated for TPS?

On March 9, 2001, the Attorney General published a Notice in the **Federal Register**, at 66 FR 14214, designating El Salvador for TPS due to the devastation caused by a series of severe earthquakes that occurred on January 13, and February 13 and 17, 2001.

When was the TPS designation for El Salvador extended?

The Attorney General and the Secretary of Homeland Security have extended the designation for El Salvador five times on the basis that the conditions warranting the March 9, 2001, designation continued to be met. *See* 67 FR 46000 (July 11, 2002); 68 FR 42071 (July 16, 2003); 70 FR 1450 (January 7, 2005); 71 FR 34637 (June 15, 2006); and 72 FR 46649 (August 21, 2007).

Why is the Secretary extending the TPS designation for El Salvador through September 9, 2010?

Over the past year, DHS and the Department of State have continued to review conditions in El Salvador. Based on this review, DHS has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001, and because El Salvador remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on significant earthquake damage. Section 244(b)(1)(B) of the Act; 8 U.S.C. 1254a(b)(1)(B).

El Salvador has still not completed reconstruction of the infrastructure damaged by several severe 2001 earthquakes. Transportation, housing, education, and health sectors are still suffering from the 2001 earthquakes, the lingering effects of which limit El Salvador's ability to absorb a large number of potential returnees. The Salvadoran government assessed that 276,594 houses were affected by the earthquakes. As of February 2007, 136,988 houses had been reconstructed or repaired, approximately 50 percent of the total number destroyed or damaged. A housing program funded by the European Union was completed in March 2007, with a total of 5,482 houses constructed. As of June 2008, a housing program funded by the Inter-American Development Bank (3,500 houses) was underway with completion anticipated by the middle of 2009. In June 2003, the Salvadoran legislature approved borrowing $142.6 million for the reconstruction of seven hospitals. As of June 2008, reconstruction of one of seven main hospitals was completed. Reconstruction of three others was underway with completion anticipated by the end of 2008.

Based upon this review, the Secretary has determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of El Salvador for TPS continue to be met. *See* section 244(b)(3)(A) of the Act; 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in El Salvador as the result of the series of earthquakes that struck the country in 2001, and El Salvador continues to be unable, temporarily, to handle adequately the return of its nationals. *See* section 244(b)(1)(B) of the Act. On the basis of these findings and determinations, the Secretary concludes that the designation of El Salvador for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). There are approximately 229,000 nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who are eligible for TPS under this designation.

What Actions Should Qualifying Aliens Take Pursuant to This Notice?

To maintain TPS, a national of El Salvador (or an alien having no nationality who last habitually resided in El Salvador) who was granted TPS and who has not had TPS withdrawn must re-register for TPS during the 90-day re-registration period from October 1, 2008 until December 30, 2008. To re-register, aliens must follow the filing procedures set forth in this Notice. An addendum to this Notice provides instructions on this extension, including filing and eligibility requirements for TPS and EADs. Information concerning the extension of the designation of El Salvador for TPS also will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*.

Notice of Extension of the TPS Designation of El Salvador

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of El Salvador for temporary protected status (TPS) on March 9, 2001, continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). Accordingly, I am extending the TPS designation of El Salvador for 18 months from March 10, 2009, through September 9, 2010.

Dated: August 29, 2008.

Michael Chertoff,

Secretary.

Temporary Protected Status Filing Requirements

Do I need to re-register for TPS if I currently have benefits through the designation of El Salvador for TPS, and would like to maintain them?

Yes. If you already have received TPS benefits through the TPS designation of El Salvador, your benefits will expire on March 9, 2009. All TPS beneficiaries must comply with the re-registration requirements, and submit any associated application fees or applications for waivers of the fees, described in this Notice in order to maintain TPS benefits through September 9, 2010. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. Section 244(a)(1) of the Act; 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly

official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, § 1517).

your removal from the United States. Section 244(c)(3)(C) of the Act; 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to Tables 1 and 2 below. The following are some helpful tips to keep in mind when completing your application:

- All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms.
- All questions on the required forms should be fully and completely answered. Failure to fully complete each required form may result in a delay in processing of your application.
- Aliens who have previously registered for TPS, but whose applications remain pending, should follow the filing instructions in this Notice if they wish to renew their TPS benefits.
- All TPS re-registration applications submitted without the required fees will be returned to applicants.
- All fee waiver requests should be filed in accordance with 8 CFR 244.20.
- If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through September 9, 2010.	You must complete and file the Form I–765, Application for Employment Authorization, with the fee of $340 or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I–765 with no fee and Form I–821 with no fee. Note: DO NOT check any box for the question ''I am applying for'' listed on Form I–765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant (see below) and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with the fee of $340 or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with no fee.
Your previous TPS application is still pending	You are applying to renew your temporary treatment benefits (i.e., an EAD with category ''C–19'' on its face).	You must complete and file the Form I–765 with the fee of $340 or a fee waiver request. You must also submit Form I–821, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2—BIOMETRIC SERVICE FEE

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or. 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category ''C–19'' on its face).	You must submit a Biometric Service fee of $80 or a fee waiver request.
You are younger than 14 years of age	1. You are applying for an EAD, or 2. You are NOT applying for an EAD.	You do NOT need to submit a Biometric Service fee.

What editions of Form I–821 and Form I–765 should I submit?

Only versions of Form I–821 dated October 17, 2007 (Rev. 10/17/07), or later, will be accepted. Only versions of Form I–765 dated May 27, 2008 (Rev. 5/27/08), or later, will be accepted. The revision date can be found in the bottom right corner of the form. The proper forms can be found on the Internet at *http://www.uscis.gov* or by calling the

USCIS forms hotline at 1–800–870–3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

TABLE 3—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for courier deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 8635, Chicago, IL 60680–8635.	U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.
You are applying for the first time as a late initial registrant.	U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 8670, Chicago, IL 60680–8670.	U.S. Citizenship and Immigration Services, Attn: TPS El Salvador [Additional Documents], 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge or the Board of Immigration Appeals you must submit evidence of the grant of TPS (such as an order from the Immigration Judge) with your application. In addition, when you receive your receipt notice (Form I–797) you will need to send an e-mail to *Tpsijgrant.vsc@dhs.gov* that includes the following information:

- Your name;
- Your date of birth;
- The receipt number for your re-registration;
- Your A-number; and
- The date you were granted TPS.

Please note that the email address provided above is solely for re-registration applicants who were granted TPS by Immigration Judges and by the Board of Immigration Appeals to use to notify USCIS of their grants of TPS. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site, or applicants may call the USCIS National Customer Service Center.

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation (see Table 4) with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: *http://www.uscis.gov*.

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I–821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided.
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package.

How do I know if I am eligible for late initial registration?

You may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, you must:

(1) Be a national of El Salvador (or an alien who has no nationality and who last habitually resided in El Salvador);

(2) Have continuously resided in the United States since February 13, 2001;

(3) Have been continuously physically present in the United States since March 9, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, you must be able to demonstrate that during the registration period for the initial designation of TPS (March 9, 2001 to September 9, 2002), you:

(1) Were a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Were a parolee or had a pending request for reparole; or

(4) Are the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. *See* 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of El Salvador, should be submitted to the appropriate address listed above in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. *See* section 244(c)(2)(A)(iii) of the Act; 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A) (describing the bars to asylum). *See* section 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

TPS and related benefits will be withdrawn if you:

(1) Are not eligible for TPS,

(2) Fail to timely re-register for TPS without good cause, or

(3) Fail to maintain continuous physical presence in the United States. *See* sections 244(c)(3)(A)–(C) of the Act; 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence status?

No. TPS is a temporary benefit. Having been granted TPS does not, of itself, provide an alien with a basis for seeking lawful permanent resident status. A TPS beneficiary who wants to become a lawful permanent resident must qualify for this status based on a family relationship, employment classification, or other generally available basis for immigration, and must be otherwise admissible as an immigrant. The alien may need to go abroad to obtain an immigrant visa, if the alien is not eligible for adjustment of status. If the alien is subject to any ground of inadmissibility, the alien would need to obtain any necessary waiver in order to become a lawful permanent resident.

If I am currently covered under TPS, what status will I have if my country's TPS designation is terminated?

When a country's TPS designation is terminated, you will maintain the same immigration status that you held prior to obtaining TPS (unless that status has since expired or been terminated), or any other status you may have acquired while registered for TPS. Accordingly, if you held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, you will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation, and who do not hold any other lawful immigration status, must plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. Section 244(a)(5) of the Act; 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered to be in, and maintaining, lawful status as a nonimmigrant during the period in which he or she is granted TPS. *See* section 244(f)(4) of the Act; 8 U.S.C. 1254a(f)(4).

However, if an alien has periods of time when he or she had no lawful immigration status before, or after, the alien's time in TPS, those period(s) of unlawful presence *may* negatively affect that alien's ability to adjust to permanent resident status or attain other immigration benefits, depending on the circumstances of the specific case. *See, e.g.*, section 212(a)(9) of the Act; 8 U.S.C. 1182(a)(9) (unlawful presence ground of inadmissibility that is triggered by a departure from the United States). In some cases, the unlawful presence ground of inadmissibility, or certain other grounds of inadmissibility, may be waived when an alien applies to adjust to permanent resident status or for another immigration status.

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. *See* sections 244(b)(2)(A)(ii) and 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Can nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who entered the United States after February 13, 2001, file for TPS?

No. This extension does not expand TPS eligibility to those who are not currently eligible. To be eligible for benefits under this extension, nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) must have continuously resided in the United States since February 13, 2001, and have been continuously physically present in the United States since March 9, 2001. *See* section 244(c)(1) of the Act, 8 U.S.C. 1254a(c)(1), *also* 66 FR 14214 (Mar. 9, 2001).

What documents should I bring to my ASC appointment?

TPS re-registrants will receive a notice in the mail with instructions as to whether or not they will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, whenever possible USCIS will reuse previously-captured biometrics and will conduct necessary security checks using those biometrics, such that you may not be required to appear at an ASC. Due to systems limitations, it may not be possible in every case to reuse biometrics.

However, even if you do not need to attend an ASC appointment, you are required to pay the separate biometrics fee or submit an appropriately supported fee waiver request. *See* 8 CFR 244.6. This fee will help cover the USCIS costs associated with use and maintenance of collected biometrics (such as fingerprints) for FBI and other background checks, identity verification, and document production.

If you are required to report to an ASC, you must bring the following documents:

(1) Your receipt notice for your re-registration application;

(2) Your ASC appointment notice; and

(3) Your current EAD.

Failure to appear at an ASC for a required ASC appointment will result in denial of your case due to abandonment unless you submit an address change notification (see instructions below) or a rescheduling request prior to your appointment.

If no further action is required for your case, you will receive a new EAD by mail valid through September 9, 2010. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is subsequently approved, you will receive a new EAD in the mail with an expiration date of September 9, 2010.

What if my address changes after I file my re-registration application?

If your address changes after you file your application for re-registration, you must complete and submit Form AR–11 by mail or electronically. The mailing address is: U.S. Citizenship and Immigration Services, Change of Address, P.O. Box 7134, London, KY 40742–7134.

Form AR–11 can also be filed electronically by following the directions on the USCIS Web site at: *http://www.uscis.gov.* To facilitate processing your address change on your TPS application, you may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does *not* relieve you of your burden to properly file a Form AR–11 with USCIS.

Will my current EAD that is set to expire on March 9, 2009, automatically be extended for six months?

No. This Notice does not automatically extend previously-issued EADs. DHS has announced the extension of the TPS designation of El Salvador and established the re-registration period at an early date to allow sufficient time for DHS to process EAD requests prior to the March 9, 2009, expiration date. You must file during the 90-day re-registration period. Failure to apply during the re-registration period without good cause will result in a withdrawal of your TPS benefits. DHS strongly encourages you to file as early as possible within the re-registration period.

May I request an interim EAD at my local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices. Interim EADs may only be issued by the Vermont Service Center.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

After March 9, 2009, a TPS beneficiary under TPS for El Salvador who has timely re-registered with USCIS as directed under this Notice and obtained a new EAD may present his or her new valid EAD to his or her employer as proof of employment authorization and identity. Employers may not accept previously issued EADs that are no longer valid. Individuals also may present any other legally acceptable document or combination of documents listed on the Form I–9 as proof of identity and employment eligibility.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2455–08; DHS Docket No. USCIS–2008–0033]

RIN 1615–ZA72

Extension of the Designation of Honduras for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security has extended the designation of Honduras for temporary protected status (TPS) for 18 months, from its current expiration date of January 5, 2009 through July 5, 2010. This Notice also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register with U.S. Citizenship and Immigration Services (USCIS). Unlike the prior extension of TPS for Honduras, this Notice does not automatically extend previously issued employment authorization documents (EADs). Eligible TPS beneficiaries must apply to USCIS for extensions of their EADs, and pay the required application fee for such extensions, during the 60-day registration period. Re-registration is limited to persons who have previously registered with USCIS for TPS under the designation of Honduras and whose applications have been granted by or remain pending with USCIS. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied to USCIS for TPS may be eligible to apply under the late initial registration provisions.

DATES: The extension of the TPS designation of Honduras is effective January 6, 2009, and will remain in effect through July 5, 2010. The 60-day re-registration period begins October 1, 2008, and will remain in effect until December 1, 2008. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Shelly Sweeney, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act.
ASC—USCIS Application Support Center.
DHS—Department of Homeland Security.
EAD—Employment Authorization Document.
HSA—Homeland Security Act of 2002.
OSC—U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices.
PRRAC—European Union's Regional Program for the Reconstruction of Central America.
Secretary—Secretary of Homeland Security.
TPS—Temporary Protected Status.
USCIS—U.S. Citizenship and Immigration Services.

What Is Temporary Protected Status?

TPS is an immigration status DHS grants to eligible nationals of designated countries or part of a designated country. During the period for which the Secretary of Homeland Security (Secretary) has designated a country for TPS, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization. The granting of TPS does not lead to permanent resident status. When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have obtained while registered for TPS.

What authority does the Secretary of Homeland Security have to extend the designation of Honduras for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the government, to designate a foreign State (or part thereof) for TPS.[1]

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law No. 107–296, 116 Stat.

Continued

The Secretary may then grant TPS to eligible nationals of that foreign State (or aliens having no nationality who last habitually resided in that State). Section 244(a)(1)(A) of the Act; 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultations with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, must determine the length of an extension of the TPS designation. Sections 244(b)(3)(A) and 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). If the Secretary determines that the foreign State no longer meets the conditions for the TPS designation, he must terminate the designation. Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

The Secretary's determination to designate a country for TPS, or to extend or terminate such designation, is not subject to judicial review. Section 244(b)(5) of the Act, 8 U.S.C. 1254a(b)(5)(A).

Why was Honduras initially designated for TPS?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register**, at 64 FR 524, designating Honduras for TPS due to the devastation resulting from Hurricane Mitch.

When was the TPS designation for Honduras extended?

The Attorney General and the Secretary of Homeland Security have extended the designation for Honduras seven times on the basis that the conditions warranting the January 5, 1999, designation continued to be met. *See* 65 FR 30438 (May 11, 2000); 66 FR 23269 (May 8, 2001); 67 FR 22451 (May 3, 2002); 68 FR 23744 (May 5, 2003); 69 FR 64084 (November 3, 2004); 71 FR 16328 (March 31, 2006); 72 FR 29529 (May 29, 2007).

Why is the Secretary extending the TPS designation for Honduras through July 5, 2010?

On June 23, 2008, the government of Honduras requested an extension of the TPS designation of Honduras. Over the past year, DHS and the Department of State have continued to review conditions in Honduras. Based on this review, DHS has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Honduras resulting from Hurricane Mitch, and Honduras remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on this environmental disaster. Section 244(a)(b)(1)(B) of the Act; 8 U.S.C. 1254a(b)(1)(B).

It is estimated that Hurricane Mitch destroyed from 80,000 to over 200,000 dwellings in Honduras. By 2004, the United States Agency for International Development had completed construction of 6,100 permanent housing units to replace those destroyed by the hurricane. By 2005, nongovernmental organizations had repaired or built over 15,000 housing units. However, much of this housing still lacks water and electricity. The Honduran government said in May 2006 that more than 600,000 Hondurans live in areas that are at high risk of flooding. As of June 2008, the European Union's Regional Program for the Reconstruction of Central America (PRRAC) housing rehabilitation program is nearing completion. The PRRAC program for water projects costing $30 million is also nearing completion. However, the drinking water systems and supplies of many Honduran communities still remain contaminated.

Based upon this review, the Secretary has determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of Honduras for TPS continue to be met. *See* section 244(b)(3)(A) of the Act; 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily, to adequately handle the return of its nationals. *See* section 244(b)(1)(B) of the Act. On the basis of these findings and determinations, the Secretary concludes that the designation of Honduras for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). There are approximately 70,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who are eligible for TPS under this extended designation.

What actions should qualifying aliens take pursuant to this notice?

To maintain TPS, a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who was granted TPS and who has not had TPS withdrawn must re-register for TPS during the 60-day re-registration period from October 1, 2008 until December 1, 2008. To re-register, aliens must follow the filing procedures set forth in this Notice. An addendum to this Notice provides instructions on this extension, including filing and eligibility requirements for TPS and EADs. Information concerning the extension of the designation of Honduras for TPS also will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Notice of Extension of the TPS Designation of Honduras

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of Honduras for temporary protected status (TPS) on January 5, 1999, continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). Accordingly, I am extending the TPS designation of Honduras for 18 months from January 6, 2009, through July 5, 2010.

Dated: August 29, 2008.

Michael Chertoff,

Secretary.

Temporary Protected Status Filing Requirements

Do I need to re-register for TPS if I currently have benefits through the designation of Honduras for TPS, and would like to maintain them?

Yes. If you already have received TPS benefits through the TPS designation of Honduras, your benefits will expire on January 5, 2009. All TPS beneficiaries must comply with the re-registration requirements, and submit any associated application fees or applications for waivers of the fees, described in this Notice in order to maintain TPS benefits through July 5, 2010. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. Section 244(a)(1) of the Act; 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly

2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, § 1517).

your removal from the United States. Section 244(c)(3)(C) of the Act; 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to Tables 1 and 2 below. The following are some helpful tips to keep in mind when completing your application:

• All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms.

• All questions on the required forms should be fully and completely answered. Failure to fully complete each required form may result in a delay in processing of your application.

• Aliens who have previously registered for TPS, but whose applications remain pending, should follow the filing instructions in this Notice if they wish to renew their TPS benefits.

• All TPS re-registration applications submitted without the required fees will be returned to applicants.

• All fee waiver requests should be filed in accordance with 8 CFR 244.20.

• If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through July 5, 2010.	You must complete and file the Form I–765, Application for Employment Authorization, with the fee of $340 or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I–765 with no fee and Form I–821 with no fee. Note: DO NOT check any box for the question ''I am applying for'' listed on Form I–765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant (see below) and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with the fee of $340 or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with no fee.
Your previous TPS application is still pending	You are applying to renew your temporary treatment benefits (i.e., an EAD with category ''C–19'' on its face).	You must complete and file the Form I–765 with the fee of $340 or a fee waiver request. You must also submit Form I–821, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2—BIOMETRIC SERVICE FEE

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category ''C–19'' on its face).	You must submit a Biometric Service fee of $80 or a fee waiver request.
You are younger than 14 years of age	1. You are applying for an EAD, or 2. You are NOT applying for an EAD.	You do NOT need to submit a Biometric Service fee.

What edition of the Form I–821 and Form I–765 should I submit?

Only versions of Form I–821 dated October 17, 2007 (Rev. 10/17/07), or later, will be accepted. Only versions of Form I–765 dated May 27, 2008 (Rev. 5/27/08), or later, will be accepted. The revision date can be found in the bottom right corner of each form. The proper forms can be found on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

TABLE 3—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for courier deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services, Attn: TPS Honduras, P.O. Box 6943, Chicago, IL 60680–6943.	U.S. Citizenship and Immigration Services, Attn: TPS Honduras, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.
You are applying for the first time as a late initial registrant.	U.S. Citizenship and Immigration Services Attn: TPS Honduras, P.O. Box 8631, Chicago, IL 60680–8631.	U.S. Citizenship and Immigration Services, Attn: TPS Honduras [Additional Documents], 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517

If you were granted TPS by an Immigration Judge or the Board of Immigration Appeals you must submit evidence of the grant of TPS (such as an order from the Immigration Judge) with your application. In addition, when you receive your receipt notice (Form I–797) you will need to send an e-mail to *Tpsijgrant.vsc@dhs.gov* that includes the following information:

- Your name;
- Your date of birth;
- The receipt number for your re-registration;
- Your A-number; and
- The date you were granted TPS.

Please note that the e-mail address provided above is solely for re-registration applicants who were granted TPS by Immigration Judges and by the Board of Immigration Appeals to use to notify USCIS of their grants of TPS. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site, or applicants can call the USCIS National Customer Service Center.

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation (see Table 4) with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: *http://www.uscis.gov.*

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I–821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided.
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package.

How do I know if I am eligible for late registration?

You may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, you must:

(1) Be a national of Honduras (or an alien who has no nationality and who last habitually resided in Honduras);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, you must be able to demonstrate that during the registration period for the initial designation of TPS (January 5, 1999 to August 20, 1999), you:

(1) Were a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Were a parolee or had a pending request for reparole; or

(4) Are the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the applicable condition(s) described above. *See* 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of Honduras, should be submitted to the appropriate address listed above in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. See section 244(c)(2)(A)(iii) of the Act; 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A) (describing bars to asylum). See section 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

TPS and related benefits will be withdrawn if you:

(1) Are not eligible for TPS,

(2) Fail to timely re-register for TPS without good cause, or

(3) Fail to maintain continuous physical presence in the United States. See sections 244(c)(3)(A)–(C) of the Act; 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence status?

No. TPS is a temporary benefit. Having been granted TPS does not, of itself, provide an alien with a basis for seeking lawful permanent resident status. A TPS beneficiary who wants to become a lawful permanent resident must qualify for this status based on a family relationship, employment classification, or other generally available basis for immigration, and must be otherwise admissible as an immigrant. The alien may need to go abroad to obtain an immigrant visa, if the alien is not eligible for adjustment of status. If the alien is subject to any ground of inadmissibility, the alien would need to obtain any necessary waiver in order to become a lawful permanent resident.

If I am currently covered under TPS, what status will I have if my country's TPS designation is terminated?

When a country's TPS designation is terminated, you will maintain the same immigration status, if any, that you held prior to obtaining TPS (unless that status has since expired or been terminated), or any other status you may have acquired while registered for TPS. Accordingly, if you held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, you will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation, and who do not hold any other lawful immigration status, must plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. Section 244(a)(5) of the Act; 8 U.S.C. 1254a(a)(5). For the purposes of change of status, and adjustment of status, each alien is considered to be in, and maintaining, lawful status as a nonimmigrant during the period in which he or she is granted TPS. *See* section 244(f)(4) of the Act; 8 U.S.C. 1254a(f)(4).

However, if an alien has periods of time when he or she had no lawful immigration status before, or after, the alien's time in TPS, those period(s) of unlawful presence may negatively affect that alien's ability to adjust to permanent resident status or attain other immigration benefits, depending on the circumstances of the specific case. *See, e.g.*, section 212(a)(9) of the Act; 8 U.S.C. 1182(a)(9) (unlawful presence ground of inadmissibility that is triggered by a departure from the United States). In some cases, the unlawful presence ground of inadmissibility, or certain other grounds of inadmissibility, may be waived when an alien applies to adjust to permanent resident status or for another immigration status.

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect your application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS.

See sections 244(b)(2)(A)(ii) and 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Can nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who entered the United States after December 30, 1998, file for TPS?

No. This extension does not expand TPS eligibility to those who are not currently eligible. To be eligible for benefits under this extension, nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must have continuously resided in the United States since December 30, 1998, and have been continuously physically present in the United States since January 5, 1999. *See* section 244(c)(1) of the Act, 8 U.S.C 1254a(c)(1), also 64 FR 524 (January 5, 1999).

What documents should I bring to my ASC appointment?

TPS re-registrants will receive a notice in the mail with instructions as to whether or not they will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, whenever possible USCIS will reuse previously-captured biometrics and will conduct necessary security checks using those biometrics, such that you may not be required to appear at an ASC. Due to systems limitations, it may not be possible in every case to reuse biometrics.

However, even if you do not need to attend an ASC appointment, you are required to pay the separate biometrics fee or submit an appropriately supported fee waiver request. *See* 8 CFR 244.6. This fee will help cover the USCIS costs associated with use and maintenance of collected biometrics (such as fingerprints) for FBI and other background checks, identity verification, and document production.

If you are required to report to an ASC, you must bring the following documents:

(1) Your receipt notice for your re-registration application;

(2) Your ASC appointment notice; and

(3) Your current EAD.

Failure to appear at an ASC for a required ASC appointment will result in denial of your case due to abandonment unless you submit an address change notification (see instructions below) or a rescheduling request prior to your appointment.

If no further action is required for your case, you will receive a new EAD by mail valid through July 5, 2010. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is subsequently approved, you will receive a new EAD in the mail with an expiration date of July 5, 2010.

What if my address changes after I file my re-registration application?

If your address changes after you file your application for re-registration, you must complete and submit Form AR–11 by mail or electronically. The mailing address is: U.S. Citizenship and Immigration Services, Change of Address, P.O. Box 7134, London, KY 40742–7134.

Form AR–11 can also be filed electronically by following the directions on the USCIS Web site at: *http://www.uscis.gov.* To facilitate processing your address change on your TPS application, you may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does *not*

relieve you of your burden to properly file a Form AR–11 with USCIS.

Will my current EAD that is set to expire on January 5, 2009, automatically be extended for six months?

No. This Notice does not automatically extend previously-issued EADs. DHS is announcing the extension of the TPS designation of Honduras and establishing the re-registration period at an early date to allow sufficient time for DHS to process EAD requests prior to the current January 5, 2009 EAD expiration date. You must file both your Form I–821 and Form I–765 during the 60-day re-registration period. Failure to apply during the re-registration period without good cause will result in a withdrawal of your TPS benefits. DHS strongly encourages you to file as early as possible within the re-registration period.

May I request an interim EAD at my local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices. Interim EADs may only be issued by the Vermont Service Center.

What documents may I show to my employer as proof of employment authorization and identity when completing Form I–9?

After January 5, 2009, a TPS beneficiary under TPS for Honduras who has timely re-registered with USCIS as directed under this Notice and obtained a new EAD may present his or her new valid EAD to his or her employer as proof of employment authorization and identity. Employers may not accept previously issued EADs that are no longer valid. Individuals also may present any other legally acceptable document or combination of documents listed on the Form I–9 as proof of identity and employment eligibility.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2454–08; DHS Docket No. USCIS–2008–0032]

RIN 1615–ZA71

Extension of the Designation of Nicaragua for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS (DHS).

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security has extended the designation of Nicaragua for temporary protected status (TPS) for 18 months from its current expiration date of January 5, 2009 through July 5, 2010. This Notice also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register with U.S. Citizenship and Immigration Services (USCIS). Unlike the prior extension of TPS for Nicaragua, this Notice does not automatically extend previously-issued employment authorization documents (EADs). Eligible TPS beneficiaries must apply to USCIS for extensions of their EADs, and pay the required application fee for such extensions, during the 60-day registration period. Re-registration is limited to persons who have previously registered with USCIS for TPS under the designation of Nicaragua and whose applications have been granted by or remain pending with USCIS. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS with USCIS may be eligible to apply under the late initial registration provisions.

DATES: The extension of the TPS designation of Nicaragua is effective January 6, 2009, and will remain in effect through July 5, 2010. The 60-day re-registration period begins October 1, 2008, and will remain in effect until December 1, 2008. To facilitate processing of applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Shelly Sweeney, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*.

Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act.
ASC—USCIS Application Support Center.
DHS—Department of Homeland Security.
EAD—Employment Authorization Document.
HSA—Homeland Security Act of 2002.
OSC—U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices.
Secretary—Secretary of Homeland Security.
TPS—Temporary Protected Status.
USCIS—U.S. Citizenship and Immigration Services.

What is Temporary Protected Status?

TPS is an immigration status DHS grants to eligible nationals of designated countries or part of a designated country. During the period for which the Secretary of Homeland Security (Secretary) has designated a country for TPS, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization. The granting of TPS does not lead to permanent resident status. When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have obtained while registered for TPS.

What authority does the Secretary of Homeland Security have to extend the designation of Nicaragua for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C.

1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the government, to designate a foreign State (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign State (or aliens having no nationality who last habitually resided in that State). Section 244(a)(1)(A) of the Act, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultations with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, must determine the length of an extension of the TPS designation. Sections 244(b)(3)(A) and 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). If the Secretary determines that the foreign State no longer meets the conditions for the TPS designation, he must terminate the designation. Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

The Secretary's determination to designate a country for TPS, or to extend or terminate such designation, is not subject to judicial review. Section 244(b)(5) of the Act, 8 U.S.C. 1254a(b)(5)(A).

Why was Nicaragua initially designated for TPS?

On January 5, 1999, the Attorney General published a Notice in the **Federal Register**, at 64 FR 526, designating Nicaragua for TPS due to the devastation resulting from Hurricane Mitch.

When was the TPS designation for Nicaragua extended?

The Attorney General and the Secretary of Homeland Security have extended the designation for Nicaragua seven times on the basis that the conditions warranting the January 5, 1999, designation continued to be met. *See* 65 FR 30440 (May 11, 2000); 66 FR 23271 (May 8, 2001); 67 FR 22454 (May 3, 2002); 68 FR 23748 (May 5, 2003); 69 FR 64088 (November 3, 2004); 71 FR 16333 (March 31, 2006); 72 FR 29534 (May 29, 2007).

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Pub. L. No. 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, § 1517).

Why is the Secretary extending the TPS designation for Nicaragua through July 5, 2010?

Over the past year, DHS and the Department of State have continued to review conditions in Nicaragua. Based on this review, DHS has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch and Nicaragua remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters. Section 244(b)(1)(B) of the Act; 8 U.S.C. 1254a(b)(1)(B).

It is estimated that Hurricane Mitch destroyed or disabled 70 percent of the roads in Nicaragua, severely damaging 71 bridges and over 1,700 miles of highway. While the Pan-American highway has been repaired, most secondary roads have not. Temporary structures were never replaced and have deteriorated, and roads and other infrastructure that were damaged by the hurricane have been poorly rebuilt or not rebuilt at all. As of November 2007, Nueva Vida, a resettlement community of 15,000 people left destitute by Hurricane Mitch, faced an unemployment rate of approximately 90 percent. Furthermore, two of the five projects funded by the Inter-American Development Bank for post-Mitch reconstruction still awaited completion as of May 2008, including one project implementing sanitation measures at Lake Managua.

Additionally, since Hurricane Mitch, Nicaragua has been beset by other economic crises and natural disasters. Hurricane Felix devastated the Northern Atlantic Autonomous Region and affected neighboring departments of Nueva Segovia and Jinotega in September 2007. Hurricane Felix destroyed more than 20,450 homes along with 100 schools, clinics, community centers, and churches, killed more than 130 people, and caused an economic loss of approximately $500 million. Tropical Depression Alma of late May 2008 exacerbated the damage caused by Hurricanes Felix and Mitch.

Based upon this review, the Secretary has determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of Nicaragua for TPS continue to be met. *See* section 244(b)(3)(A) of the Act; 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as the result of an environmental disaster, and Nicaragua continues to be unable, temporarily, to adequately handle the return of its nationals. *See* section 244(b)(1)(B) of the Act. On the basis of these findings and determinations, the Secretary concludes that the designation of Nicaragua for TPS should be extended for an additional 18-month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). There are approximately 3,500 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who are eligible for TPS under this designation.

What actions should qualifying aliens take pursuant to this notice?

To maintain TPS, a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who was granted TPS and who has not had TPS withdrawn must re-register for TPS during the 60-day re-registration period from October 1, 2008 until December 1, 2008. To re-register, aliens must follow the filing procedures set forth in this Notice. An addendum to this Notice provides instructions on this extension, including filing and eligibility requirements for TPS and EADs. Information concerning the extension of the designation of Nicaragua for TPS also will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*.

Notice of Extension of the TPS Designation of Nicaragua

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate government agencies, that the conditions that prompted the designation of Nicaragua for temporary protected status (TPS) on January 5, 1999, continue to be met. See section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). Accordingly, I am extending the TPS designation of Nicaragua for 18 months from January 6, 2009, through July 5, 2010.

Dated: August 29, 2008.

Michael Chertoff,

Secretary.

Temporary Protected Status Filing Requirements

Do I need to re-register for TPS if I currently have benefits through the designation of Nicaragua for TPS, and would like to maintain them?

Yes. If you already have received TPS benefits through the TPS designation of Nicaragua, your benefits will expire on January 5, 2009. All TPS beneficiaries

must comply with the re-registration requirements, and submit any associated application fees or applications for waivers of the fees, described in this Notice in order to maintain TPS benefits through July 5, 2010. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. Section 244(a)(1) of the Act; 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. Section 244(c)(3)(C) of the Act; 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to Tables 1 and 2 below. The following are some helpful tips to keep in mind when completing your application:

- All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms.
- All questions on the required forms should be fully and completely answered. Failure to fully complete each required form may result in a delay in processing of your application.
- Aliens who have previously registered for TPS, but whose applications remain pending, should follow the filing instructions in this Notice if they wish to renew their TPS benefits.
- All TPS re-registration applications submitted without the required fees will be returned to applicants.
- All fee waiver requests should be filed in accordance with 8 CFR 244.20.
- If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through July 5, 2010.	You must complete and file the Form I–765, Application for Employment Authorization, with the fee of $340 or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I–765 with no fee and Form I–821 with no fee. Note: DO NOT check any box for the question ''I am applying for'' listed on Form I–765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant (see below) and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with the fee of $340 or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with no fee.
Your previous TPS application is still pending	You are applying to renew your temporary treatment benefits (i.e., an EAD with category ''C–19'' on its face).	You must complete and file the Form I–765 with the fee of $340 or a fee waiver request. You must also submit Form I–821, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2—BIOMETRIC SERVICE FEE

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category ''C–19'' on its face).	You must submit a Biometric Service fee of $80 or a fee waiver request.
You are younger than 14 years of age	1. You are applying for an EAD, or 2. You are NOT applying for an EAD.	You do NOT need to submit a Biometric Service fee.

What edition of the Form I–821 and Form I–765 should I submit?

Only versions of Form I–821 dated October 17, 2007 (Rev. 10/17/07), or later, will be accepted. Only versions of Form I–765 dated May 27, 2008 (Rev. 5/27/08), or later, will be accepted. The revision date can be found in the bottom right corner of the form. The proper forms can be found on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Where should I submit my application for TPS?

Please reference Table 3 below to see where to mail your specific application.

TABLE 3—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for courier deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services, Attn: TPS Nicaragua, P.O. Box 6943, Chicago, IL 60680–6943.	U.S. Citizenship and Immigration Services, Attn: TPS Nicaragua, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.
You are applying for the first time as a late initial registrant.	U.S. Citizenship and Immigration Services, Attn: TPS Nicaragua, P.O. Box 8631, Chicago, IL 60680–8631.	U.S. Citizenship and Immigration Services, Attn: TPS Nicaragua, [Additional Documents] 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge or the Board of Immigration Appeals you must submit evidence of the grant of TPS (such as an order from the Immigration Judge) with your application. In addition, when you receive your receipt notice (Form I–797) you will need to send an e-mail to *Tpsijgrant.vsc@dhs.gov* that includes the following information:

- Your name;
- Your date of birth;
- The receipt number for your re-registration;
- Your A-number; and
- The date you were granted TPS.

Please note that the e-mail address provided above is solely for re-registration applicants who were granted TPS by Immigration Judges and by the Board of Immigration Appeals to use to notify USCIS of their grants of TPS. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site, or can call the USCIS National Customer Service Center.

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation (see Table 4) with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: *http://www.uscis.gov*.

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I–821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided.
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package.

How do I know if I am eligible for late registration?

You may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, you must:

(1) Be a national of Nicaragua (or an alien who has no nationality and who last habitually resided in Nicaragua);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, you must be able to demonstrate that during the registration period for the initial designation of TPS (January 5, 1999 to August 20, 1999), you:

(1) Were a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Were a parolee or had a pending request for reparole; or

(4) Are the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. *See* 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of Nicaragua, should be submitted to the appropriate address listed above in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. *See* section 244(c)(2)(A)(iii) of the Act; 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A) (describing bars to asylum). *See* section

244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

TPS and related benefits will be withdrawn if you:

(1) Are not eligible for TPS,

(2) Fail to timely re-register for TPS without good cause, or

(3) Fail to maintain continuous physical presence in the United States. *See* sections 244(c)(3)(A)–(C) of the Act; 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence status?

No. TPS is a temporary benefit. Having been granted TPS does not, of itself, provide an alien with a basis for seeking lawful permanent resident status. A TPS beneficiary who wants to become a lawful permanent resident must qualify for this status based on a family relationship, employment classification, or other generally available basis for immigration, and must be otherwise admissible as an immigrant. The alien may need to go abroad to obtain an immigrant visa, if the alien is not eligible for adjustment of status. If the alien is subject to any ground of inadmissibility, the alien would need to obtain any necessary waiver in order to become a lawful permanent resident.

If I am currently covered under TPS, what status will I have if my country's TPS designation is terminated?

When a country's TPS designation is terminated, you will maintain the same immigration status, if any, that you held prior to obtaining TPS (unless that status has since expired or been terminated), or any other status you may have acquired while registered for TPS. Accordingly, if you held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, you will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation, and who do not hold any other lawful immigration status, must plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. Section 244(a)(5) of the Act; 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, each alien is considered to be in, and maintaining, lawful status as a nonimmigrant during the period in which he or she is granted TPS. *See* section 244(f)(4) of the Act; 8 U.S.C. 1254a(f)(4).

However, if an alien has periods of time when he or she had no lawful immigration status before, or after, the alien's time in TPS, those period(s) of unlawful presence may negatively affect that alien's ability to adjust to permanent resident status or attain other immigration benefits, depending on the circumstances of the specific case. *See*, *e.g.*, section 212(a)(9) of the Act; 8 U.S.C. 1182(a)(9) (unlawful presence ground of inadmissibility that is triggered by a departure from the United States). In some cases, the unlawful presence ground of inadmissibility, or certain other grounds of inadmissibility, may be waived when an alien applies to adjust to permanent resident status or for another immigration status.

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. *See* sections 244(b)(2)(A)(ii) and 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Can nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who entered the United States after December 30, 1998, file for TPS?

No. This extension does not expand TPS eligibility to those who are not currently eligible. To be eligible for benefits under this extension, nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must have continuously resided in the United States since December 30, 1998, and have been continuously physically present in the United States since January 5, 1999. *See* section 244(c)(1) of the Act, 8 U.S.C. 1254a(c)(1), also 64 FR 526 (Jan. 5, 1999).

What documents should I bring to my ASC appointment?

TPS re-registrants will receive a notice in the mail with instructions as to whether or not they will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. To increase efficiency and improve customer service, whenever possible USCIS will reuse previously-captured biometrics and will conduct necessary security checks using those biometrics, such that you may not be required to appear at an ASC. Due to systems limitations, it may not be possible in every case to reuse biometrics.

However, even if you do not need to attend an ASC appointment, you are required to pay the separate biometrics fee or submit an appropriately supported fee waiver request. *See* 8 CFR 244.6. This fee will help cover the USCIS costs associated with use and maintenance of collected biometrics (such as fingerprints) for FBI and other background checks, identity verification, and document production.

If you are required to report to an ASC, you must bring the following documents:

(1) Your receipt notice for your re-registration application;

(2) Your ASC appointment notice; and

(3) Your current EAD.

Failure to appear at an ASC for a required ASC appointment will result in denial of your case due to abandonment unless you submit an address change notification (see instructions below) or a rescheduling request prior to your appointment.

If no further action is required for your case, you will receive a new EAD by mail valid through July 5, 2010. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is subsequently approved, you will receive a new EAD in the mail with an expiration date of July 5, 2010.

What if my address changes after I file my re-registration application?

If your address changes after you file your application for re-registration, you must complete and submit Form AR–11 by mail or electronically. The mailing address is: U.S. Citizenship and Immigration Services, Change of Address, P.O. Box 7134, London, KY 40742–7134.

Form AR–11 can also be filed electronically by following the directions on the USCIS Web site at: *http://www.uscis.gov*. To facilitate

processing of your address change on your TPS application, you may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does not relieve you of your burden to properly file a Form AR–11 with USCIS.

Will my current EAD which is set to expire on January 5, 2009, automatically be extended for six months?

No. This Notice does not automatically extend previously issued EADs. DHS is announcing the extension of the TPS designation of Nicaragua and establishing the re-registration period at an early date to allow sufficient time for DHS to process EAD requests prior to the current January 5, 2009 EAD expiration date. You must file both your Form I–821 and Form I–765 during the 60-day re-registration period. Failure to apply during the re-registration period without good cause will result in a withdrawal of your TPS benefits. DHS strongly encourages you to file as early as possible within the re-registration period.

May I request an interim EAD at my local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices. Interim EADs may only be issued by the Vermont Service Center.

What documents may I show to my employer as proof of employment authorization and identity when completing Form I–9?

After January 5, 2009, a TPS beneficiary under TPS for Nicaragua who has timely re-registered with USCIS as directed under this Notice and obtained a new EAD may present his or her new valid EAD to his or her employer as proof of employment authorization and identity. Employers may not accept previously issued EADs that are no longer valid. Individuals also may present any other legally acceptable document or combination of documents listed on the Form I–9 as proof of identity and employment eligibility.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html*.

[FR Doc. E8–22978 Filed 9–30–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2008–N0221; 70133–1265–0000–S3]

Selawik National Wildlife Refuge, Kotzebue, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to revise the comprehensive conservation plan and prepare an environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a revised Comprehensive Conservation Plan (CCP) and environmental assessment (EA) for Selawik National Wildlife Refuge (Selawik Refuge, Refuge). We furnish this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. We will use local announcements, special mailings, newspaper articles, the Internet, and other media announcements to inform people of opportunities to provide input throughout the planning process. We will hold public meetings in communities within and near Selawik Refuge during preparation of the revised plan.

DATES: Please provide written comments on the scope of the CCP revision and planning process by January 15, 2009.

ADDRESSES: Address comments, questions, and requests for further information to:

Agency Web Site: For more information visit *http://alaska.fws.gov/nwr/planning/spol.htm.*

E-mail: Selawik_planning@fws.gov. Please include ''Selawik Refuge Revised CCP'' in the subject line of the message.

Mail: Jeffrey Brooks, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, MS 231, Anchorage, AK 99503–6199.

Fax: Comments may be faxed to (907) 786–3965.

In-Person: Call (907) 786–3357 to make an appointment during regular business hours at the USFWS Regional Office, 1011 E. Tudor Road, Anchorage, AK 99503 or call (907) 442–3799 to make an appointment during regular business hours at Selawik Refuge Headquarters, Kotzebue, AK 99752.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brooks, Planning Team Leader, (907) 786–3839 or *Selawik_planning@fws.gov*.

SUPPLEMENTARY INFORMATION: With this notice, we initiate our process for developing a revised CCP for the Selawik Refuge, Alaska. We furnish this notice in compliance with our policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to be considered in the EA and during the development of the CCP.

Background

We are required to develop a CCP for each national wildlife refuge in Alaska according to direction provided in the Alaska National Interest Lands Conservation Act (ANILCA) (94 Stat. 2371) and the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966. The purpose in developing a CCP is to provide refuge managers with long-term guidance for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System. CCPs are prepared in a manner consistent with sound principles of fish and wildlife management and conservation, visitor management principles, legal mandates, and Service policies. CCPs outline broad management direction for conservation of wildlife habitats, subsistence activities, and identification and management of wildlife-oriented recreation opportunities including, hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Improvement Act and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Each unit of the National Wildlife Refuge System was established for specific purposes. These purposes guide us as we develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and as we decide which types of visitor services and public uses will occur on refuges. The planning process used to develop CCPs allows the Service and the public to evaluate management

goals and objectives for the refuges. The planning process for refuges is designed to prioritize conservation of important wildlife habitats, while providing for wildlife-oriented recreation opportunities that are compatible with the establishing purposes of each refuge and the mission of the National Wildlife Refuge System.

We will conduct a comprehensive conservation planning process that will provide opportunities for Tribal, State, and local government agencies; organizations; and the public to participate in identifying planning issues through public involvement activities. We request input in the form of issues, concerns, ideas, and suggestions for future management of Selawik Refuge.

We will prepare an EA in accordance with the requirements of the NEPA, as amended; NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and Service policies that comply with those laws and regulations.

Refuge Overview

Selawik Refuge straddles the Arctic Circle in northwestern Alaska, encompassing an area approximately the size of Connecticut. The Refuge was established by ANILCA in 1980. When land conveyances under the Alaska Native Claims Settlement Act (approximately 800,000 acres) are completed, 2.1 million acres are expected to remain under federal ownership and management. The Refuge staff manages Selawik Refuge from a headquarters office in Kotzebue, Alaska.

ANILCA requires us to designate areas in refuges according to their respective resources and values and to specify programs and uses within the areas designated. To meet this requirement, the Alaska Region established categories for refuges including Wilderness, Minimal, Moderate, Intensive, and Wild River management. For each management category, we identified appropriate activities, public uses, commercial uses, and facilities. Only the Minimal, Wilderness, and Wild River management categories are applied to Selawik Refuge. The Selawik River and corridor is a designated Wild River. About 11 percent of the Refuge is designated Wilderness. The remainder, and majority of the Refuge's acreage, is managed in the Minimal category.

The Selawik River meanders through the heart of the Refuge, creating a rich succession of habitats, including vast wetlands. The names of both the river and the Refuge originated from the Inupiaq word ''siilivik,'' which means ''place of sheefish.'' The sheefish, or innconnu, is a member of the whitefish family that provides an important, and highly desired, food resource for Native subsistence harvesters in this arctic region of Alaska.

Extensive tundra wetlands containing grass and sedge meadows dominate the Refuge landscape, while boreal spruce forests, alder, and willow thickets trace stream and river drainages. Multitudes of migratory waterfowl and shorebirds breed on 24,000 lakes and ponds within the Refuge. Neo-tropical songbirds nest in forests and willow thickets. Moose, wolves, lynx, bears, muskoxen, arctic and red fox, beavers, and muskrats are year-round residents. The Western Arctic caribou herd migrates across Selawik Refuge. In mild winters, small bands of caribou remain on the Refuge to forage in the lichen-covered foothills. Many rivers, sloughs, and lakes support both freshwater and anadromous fisheries, and provide spawning grounds for northern pike, arctic grayling, and various types of whitefish.

Access to the Refuge is possible only by boat, float-or ski-equipped airplane, snowmobile, or dog sled team. Snowmobile trails provide vital links among the Native villages of the region in winter and are usually passable to travelers through the end of April. Several Native Alaskan villages are located within or near the Refuge boundaries including Noorvik, Selawik, Kiana, and Ambler.

The purposes of the Selawik Refuge set forth by ANILCA in 1980 are (i) to conserve fish and wildlife populations and habitats in their natural diversity, including but not limited to, the Western Arctic caribou herd (including participation in scientific studies to better manage caribou), waterfowl, shorebirds and other migratory birds, and salmon and sheefish; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge.

Preliminary Issues, Concerns, and Opportunities: We have identified preliminary issues, concerns, and opportunities that may be addressed in the CCP. These are (1) management of legal access such as easements and rights-of-way; (2) management of access for community residents and the visiting public; (3) management of hunting and fishing, both subsistence and commercial; (4) concerns about degradation of cultural resources; (5) impacts of off-refuge activities to Refuge resources; and (6) concerns about how managers can proactively address uncertainties such as climate change and related large-scale habitat changes. These and other issues will be explored during the public scoping process. The Refuge planning team, including representatives from State of Alaska and Tribal governments, will determine which key issues will be addressed in the revised CCP.

Public Meetings: We will involve the public in the planning process through open houses, meetings, and multiple requests for comments. We will mail planning updates to individuals, agencies, and organizations on the Selawik Refuge mailing list to keep the public aware of the status of the revised CCP. We will inform the public as to how we use their comments and other input in each stage of the planning process. Scoping meetings are planned to be held in October and November 2008 in Kotzebue and in several local communities within or near the Refuge boundaries. Details of public involvement and participation activities will be announced locally.

Public Availability of Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information with 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 25, 2008.

Gary Edwards,

Regional Director, U.S. Fish & Wildlife Service, Anchorage, Alaska.

[FR Doc. E8–23118 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[9000; CA–690–08–1020–EE]

Notice of Intent To Amend the California Desert Conservation Area Plan, California

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM), Needles Field Office intends to prepare an amendment to the California Desert Conservation Area (CDCA) Plan with an associated environmental assessment (EA). This notice initiates the public participation and scoping processes for the CDCA Plan amendment and environmental assessment.

DATES: Public comments will be accepted throughout the plan amendment and EA process, but to be most beneficial comments on issues and potential impacts should be submitted in writing to the address listed below within 30 days following the publication of this notice in the **Federal Register**.

ADDRESSES: Comments and other correspondence regarding issues and planning criteria should be sent to the BLM, Needles Field Office, attention George R. Meckfessel, Planning and Environmental Coordinator, Needles Field Office, Bureau of Land Management, 1303 South US Highway 95, Needles, California 92363. Documents pertinent to this notice, including comments of respondents, will be available for public review at the Needles Field Office, California during regular business hours (7:30 a.m. to 4 p.m.) Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to the project mailing list, contact George R. Meckfessel, (760) 326–7008, or e-mail *George_Meckfessel@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM, Needles Field Office intends to prepare an amendment to the CDCA Plan with an associated environmental assessment that would make all or a portion of the Valley Wells Allotment unavailable for grazing. The allotment consists of 223,000 acres and is located in northeastern San Bernardino County, California. The allotment includes portions of the North Mesquite Mountains Wilderness, Mesquite Wilderness, Kingston Range Wilderness, and the Hollow Hills Wilderness areas.

The proposal to make a portion or all of the allotment unavailable for grazing livestock does not conform to the CDCA Plan and, therefore, requires the development of a plan amendment.

Approximately half of the allotment is within a Desert Wildlife Management Area (DWMA), designated by the BLM through the Northern and Eastern Mojave Plan amendment (2002) to the CDCA Plan. Most, but not all, of the DWMA contains critical habitat for the threatened desert tortoise (*Gopherus agassizii*), designated by the U.S. Fish and Wildlife Service (USFWS). Making all or a portion of the allotment unavailable for grazing would complement and enhance implementation of the USFWS Desert Tortoise (Mojave Population) Recovery Plan (1994). Comparable desert tortoise habitat within the allotment is contained in, and outside, the DWMA.

Additional benefits to non-listed species and habitats, such as the BLM sensitive Rusby's desert mallow (*Sphaeralcea rusbyi* ssp. *eremicola*) and the Mojave fringe-toed lizard (*Uma scoparia*), would also be realized by removal of cattle grazing from all or portions of the allotment.

Preliminary issues identified include: air quality; areas of critical environmental concern; cultural resources; environmental justice; livestock grazing; Native American religious concerns; socioeconomics; soils, water quality; wetlands/riparian zones; wilderness; wildlife, including threatened or endangered species; and vegetation, including invasive species.

Preliminary planning criteria include: 1. Developing the plan amendment in compliance with Federal Land Policy and Management Act, all other applicable laws, regulations, executive orders, and BLM supplemental program guidance; 2. developing an EA in the planning process that will comply with National Environmental Policy Act standards; 3. initiating government to government consultation, including tribal interests; 4. incorporating by reference the Standards for Rangeland Health and Guidelines for Livestock Grazing Management into the plan amendment/EA; 5. complying with Appendix C of BLM's Planning Handbook (H 1601–1) in making resource specific determinations; 6. assuring that the plan amendment is compatible, to the extent possible, with existing plans and policies of adjacent local, State, Tribal, and Federal agencies; and, 7. consider the extent to which the plan amendment achieves the recovery goals outlined in the Desert Tortoise (Mojave Population) Recovery Plan and the Northern and Eastern Mojave Plan amendment to the CDCA Plan.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the ''**ADDRESSES**'' section above. To be most helpful, you should submit comments within 30 days after the date of publication of this notice. Before including your address, phone number, email 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.

The BLM will place issues identified during scoping into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the plan as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan amendment. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines that will be involved in the planning process include but are not limited to rangeland management, wilderness, sensitive species (plants and animals,) cultural resources, and recreation.

Dated: September 16, 2008.

Rodney Mouton,

Acting Field Manager.

[FR Doc. E8–22766 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV912–1640–PH–006F; 08–08807; TAS: 14X1109]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Nevada's three Resource Advisory Council will hold a joint meeting.

DATES: Thursday, November 13, 2008, from 8 a.m. to 5 p.m., and Friday, November 14, 2008, from 8 a.m. to 12 p.m., at the Gold Coast Hotel-Casino, 4000 W. Flamingo Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Rochelle Ocava (775) 861–6588 or *Rochelle_Ocava@blm.gov.*

SUPPLEMENTARY INFORMATION: The three 15-member Nevada Councils advise the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in Nevada. Agenda topics include a presentation and discussion of accomplishments during 2008 and the outlook for 2009 for the BLM in Nevada; opening remarks and closeout reports of the three Resource Advisory Councils (RACs); breakout meetings of each group category; breakout meetings of the three RACs; discussion of a recreation subgroup of the existing RACs; and setting of schedules for meetings of the individual RACs for the coming year. An agenda will be available 30 days prior to the meeting at *http://www.blm.gov/nv.* All meetings are open to the public. The public may present written comments to the three RAC groups or the individual RACs. The public comment period for the Council meeting will be at 3 p.m. on Thursday, November 13. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations should contact Rochelle Ocava.

Dated: September 23, 2008.

Ron Wenker,

State Director, Nevada.

[FR Doc. E8–23126 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–08; TXNM 107307, TXNM 107313]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases TXNM 107307 and TXNM 107313

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, The Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas leases TXNM 107307 and TXNM 107313 from the lessee, Southern Bay Energy, LLC for lands in Burleson County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, BLM, New Mexico State Office, at (505) 438–7520.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16 2/3 percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate leases TXNM 107307 and TXNM 107313, effective the date of termination, December 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 25, 2008.

Margie Dupre,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8–23104 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–ES; N–84739; 8–08807; TAS:14X5232]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has received a request for lease and subsequent conveyance of approximately 19.375 acres of public land in the City of Las Vegas, Clark County, Nevada, under the Recreation and Public Purposes (R&PP) Act. The Regional Transportation Commission of Southern Nevada (RTC) proposes to use the land for a public Park and Ride bus facility.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance of the lands until November 17, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Kimber Liebhauser, (702) 515–5088.

SUPPLEMENTARY INFORMATION: The following described land in Clark County, Nevada, has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). The parcel of land is located north of Elkhorn Road, between North Durango Drive and the U.S. Highway 95 and is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,

Sec. 17, a portion of Government Lot 19 (NE¼SW¼SE¼, E½SE¼SW¼SE¼, SE¼NE¼NW¼SW¼SE¼, E½SE¼NW¼SW¼SE¼, N½NW¼NW¼SW¼SE¼, N½NE¼NW¼SW¼SE¼).

The area described contains 19.375 acres, more or less.

This description will be replaced by additional lot designation on final approval of the official plat of survey.

In accordance with the R&PP Act, the RTC has filed an application to develop the described land as a public Park and Ride facility with related facilities to meet the growing travel demands between the northwest part of the Las Vegas valley and the resort corridor. Related facilities include a terminal building with a waiting area, restrooms

and utility/storage rooms as well as a separate paved parking area for the RTC and the public, bus bays with canopies, landscaping and off-site street improvements. There is a current R&PP lease authorized to the City of Las Vegas as N–61839 for a public park which occupies the space of the N–84739 application. The existing lease is undergoing a partial relinquishment to accommodate the Park and Ride lease application. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–84739, which is located in the BLM Las Vegas Field Office.

The RTC is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act. The land is not required for any Federal purpose. The lease/conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe; and

3. A right-of-way for a Federal-Aid Highway reserved to the Federal Highway Administration, its successors and assigns, by right-of-way N–46063, pursuant to the Act of August 27, 1958, 072 Stat. 0916, 23 U.S.C. 317(A).

The lease/conveyance will be subject to:

1. Valid existing rights;

2. A right-of-way for overhead distribution lines and telephone lines granted to Nevada Power Company, its successors and assigns, by right-of-way N–58721, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

3. A right-of-way for a 42-inch diameter water pipeline granted to Las Vegas Valley Water District, its successors and assigns, by right-of-way N–61329, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

4. A right-of-way for fiber optic facilities granted to Nevada Bell, its successors or assigns, by right-of-way N–73706, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

5. A right-of-way for underground telephone facilities granted to Central Telephone Company, its successors and assigns, by right-of-way N–73808, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

6. A right-of-way for underground distribution lines granted to Nevada Power Company, its successors and assigns, by right-of-way N–73826, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

7. A right-of-way for road, sewer and drainage purposes granted to the City of Las Vegas, its successors and assigns, by right-of-way N–73902, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

8. A right-of-way for fiber optic facilities granted to Cox Communications, its successors or assigns, by right-of-way N–74001, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

9. A right-of-way for underground electrical distribution lines granted to Nevada Power Company, its successors or assigns, by right-of-way N–75274, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

10. A right-of-way for underground conduits and cables granted to Nevada Power Company, its successors or assigns, by right-of-way N–75820, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

11. A right-of-way for a polyethylene natural gas pipeline granted to Southwest Gas Corporation, its successors or assigns, by right-of-way N–79227, pursuant to the Act of February 25, 1920, 041 Stat. 0437, 30 U.S.C. 185, Sec. 28;

12. A right-of-way for underground distribution lines granted to Nevada Power Company, its successors or assigns, by right-of-way N–79387, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761;

13. A right-of-way for underground electrical distribution lines granted to Nevada Power Company, its successors or assigns, by right-of-way N–81383, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761; and

14. A right-of-way for a temporary work area granted to Nevada Power Company, its successors or assigns, by right-of-way N–81383–01, pursuant to the Act of October 21, 1976, 090 Stat. 2776, 43 U.S.C. 1761.

On publication of this notice in the **Federal Register**, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

In the absence of any adverse comments, the decision will become effective on December 1, 2008. The lands will not be available for lease/conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5.

Dated: September 16, 2008.

Kimber Liebhauser,

Acting Assistant Field Manager, Division of Lands, Las Vegas, Nevada.

[FR Doc. E8–23129 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

List of Programs Eligible for Inclusion in Fiscal Year 2009 Funding Agreements To Be Negotiated With Self-Governance Tribes

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2009 funding agreements with self-governance tribes and lists programmatic targets according

to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2009.

ADDRESSES: You may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov*. In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0036'' to view supporting and related materials for this notice. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding this notice may be directed to Shirley M. Conway, Regulations Manager, Minerals Revenue Management, Minerals Management Service, 1849 C Street, NW., MS 5557 MIB, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the ''Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in the DOI bureaus other than the Bureau of Indian Affairs (BIA), are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Act, each bureau is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by the DOI that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribal government through a self-governance funding agreement. The DOI interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, DOI will determine whether a specific function is inherently Federal on a case-by-case basis, considering the totality of circumstances.

II. Eligible Non-BIA Programs of the Minerals Management Service

Below is a listing of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Minerals Management Service (MMS) will also consider for inclusion in funding agreements other programs or activities not included below, but which, upon request of a self-governance tribe, MMS determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin such discussions.

The MMS provides stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. The MMS is responsible for the management of the Federal Outer Continental Shelf lands, which are submerged lands off the coasts that have significant energy and mineral resources. Within the Offshore Minerals Management program, environmental impact assessments and statements, and environmental studies may be available if a self-governance tribe demonstrates a special geographic, cultural or historical connection.

The MMS also offers mineral-owning tribes other opportunities to become involved in its Minerals Revenue Management (MRM) functions. These programs address the intent of tribal self-governance but are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions. Generally, MRM functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1701. The MRM functions that may be available to self-governance tribes are as follows:

1. *Audit of Tribal Royalty Payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities.

2. *Verification of Tribal Royalty Payments.* Financial compliance verification and monitoring activities, and production verification.

3. *Tribal Royalty Reporting, Accounting, and Data Management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal Royalty Valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

For questions regarding self-governance contact Shirley M. Conway, Regulations Manager, Minerals Revenue Management, Minerals Management Service, MS 5438 MIB, 1849 C Street, NW., Washington, DC 20240, telephone 202–208–3512, fax 202–501–0247.

III. Programmatic Targets

During Fiscal Year 2009, upon request of a self-governance tribe, MMS will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: September 24, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8–23175 Filed 9–30–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of November 1, 2008 Meeting.

SUMMARY: This notice sets forth the date of the November 1, 2008 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, November 1, 2008 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda:

The November 1, 2008 joint Commission and Task Force meeting will consist of

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from August 2, 2008.
3. Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: September 8, 2008.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. E8–22924 Filed 9–30–08; 8:45 am]

BILLING CODE 4312–25–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Review)]

Refined Brown Aluminum Oxide From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on refined brown aluminum oxide from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 20, 2008. Comments on the adequacy of responses may be filed with the Commission by December 15, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2003, the Department of Commerce issued an antidumping duty order on imports of refined brown aluminum oxide from China (68 FR 65249). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all merchandise corresponding to the scope of the investigation, as well as any refined brown aluminum oxide where particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, as long as this product has been crushed, screened, and sorted into consistent sizes.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all U.S. producers of the domestic like product, as defined above, with the exception of Great Lakes Minerals, which was excluded from the domestic industry as a related party.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–189, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is November 19, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 20, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries since the *Order Date.*

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology, production methods, development efforts, ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production), and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications, the existence and availability of substitute products, and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 19, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–22490 Filed 9–30–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on September 19, 2008, a proposed Settlement Agreement regarding the East Helena Superfund Site, Operable Unit No. 2 (the Site), was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.) (Docket No. 9231). The settlement reserves claims for any liabilities for property owned by Debtors and for groundwater contamination, among other things. The proposed Agreement entered into by the United States on behalf of the Environmental Protection Agency (EPA), the State of Montana, and Asarco LLC and Asarco Master Inc. (the Debtors), provides, *inter alia*, that with respect to the Site, (1) the United States on behalf of EPA shall have an allowed general unsecured claim of $13,209,783 for past and future response costs, and (2) the Debtors will not oppose disbursements out of the Asarco Environmental Trust up to $5,773,371 to perform work described by EPA's proposed plan for Site remediation.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC*, DJ Ref. No. 90–11–3–08633.

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, at the office of the Environmental Protection Agency Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Agreement 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 $4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–22995 Filed 9–30–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Partial Overtime Exemption for Remedial Education (29 U.S.C. 207(q) and 29 CFR 516.34). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 1, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* , sets the federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206, 207, 211, and 212. FLSA requirements apply to employers and employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.*

The FLSA generally requires employers to pay overtime hours worked by covered employees at time and one-half the employee's regular rate of pay. *See* 29 U.S.C. 207(a)(1); 29 CFR 778. FLSA section 7(q) provides a partial overtime exemption that allows an employer to employ any employee who lacks a high school diploma or whose reading level or basic skills is at, or below, the eighth grade level for up to ten overtime hours per week without paying the usually required half-time premium, if the employee is receiving remedial education during such overtime hours. 29 U.S.C. 207(q); *See also* 29 CFR 778.603. The employer-provided remedial education must be designed to provide up to eighth grade level basic skills or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate and may not include job-specific training. 29 U.S.C. 207(q); 29 CFR 778.603. The employer must also compensate for time spent in such remedial education at no less than the employee's regular rate of pay. 29 U.S.C. 207(a), (q); 29 CFR 778.603. Regulations, 29 CFR 516, Records to be Kept by Employers, contains the basic recordkeeping requirements for employers of employees subject to FLSA protections. In addition to the basic recordkeeping requirements, employers using this partial overtime exemption must indicate the hours an employee engages in exempt remedial education each workday and total hours each work week. 29 CFR 516.34, 778.603. The employer may either state the hours separately or make a notation on the payroll. 29 CFR 516.34, and 778.603. The subject information collection relates only to the section 516.34 requirements. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to review and determine employer compliance with the applicable section of the FLSA. These recordkeeping requirements for employers utilizing the partial overtime exemption for remedial education are necessary to ensure employees are paid in compliance with the FLSA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Partial Overtime Exemption for Remedial Education.

OMB Number: 1215–0175.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Type of Response: Recordkeeping.

Total Respondents: 15,000.

Total Annual Responses: 30,000.

Estimated Total Burden Hours: 5,000.

Estimated Time per Response: 1 minute per week for 10 weeks (10 minutes per year).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Dated: September 25, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–22935 Filed 9–30–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Certified Payrolls Under The Davis-Bacon and Related Acts (WH–347). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 1, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Copeland Act requires contractors and subcontractors performing work on federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each employee during the preceding week. See 29 U.S.C. 3145 and 29 CFR 3.3(b). Regulations 29 CFR 5.5(a)(3)(ii)(A) requires contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project. A signed ''Statement of Compliance'' indicating the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon Act (DBA) prevailing wage rate for the work performed must accompany the payroll. *See id.* 5.5(a)(3)(ii)(B). Regulations 29 CFR 3.3(b) requires each contractor to furnish such weekly ''Statements of Compliance.'' *See also* 29 CFR 5.5(a)(3)(ii)(B). Regulations 29 CFR 3.4(b) and 5.5(a)(3)(i) require contractors to maintain these records for three years after completion of the work. Regulation 29 CFR 5.5(a)(3)(i) requires contractors performing work on projects subject to the Davis-Bacon and Related Acts (DBRA) to retain the name, address, social security number, correct classifications, hourly rates of wages paid including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in DBA section 1(b)(2)(B), daily and weekly number of hours worked, and deductions made and actual wages paid of each worker on the contract. The DOL has developed the optional use Form WH–347, Payroll Form, which contractors may use to meet the payroll reporting requirements. The form contains the basic payroll information that contractors must furnish each week they perform any work subject to the DBRA. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks approval for the extension of this currently approved information collection in order to carry out its responsibility to determine a contractor's compliance with provisions of the DBRA and the Copeland Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Optional Use Payroll Form under the Davis-Bacon Act.

OMB Number: 1215–0149

Agency Numbers: WH–347.

Affected Public: Business or other for-profit.

Total Respondents: 78,218.

Total Annual Responses: 7,196,056.

Estimated Total Burden Hours: 6,716,319.

Estimated Time per Response: 56 minutes.

Frequency: Weekly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $899,507.

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

Dated: September 25, 2008.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–22936 Filed 9–30–08; 8:45 am]

BILLING CODE 4510–27–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Meeting of Arts and Artifacts Indemnity Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Domestic Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9 a.m. to 5 p.m., on Monday, October 20, 2008.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after December 1, 2008.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's

Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–23141 Filed 9–30–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR–43 for an Additional 20-Year Period; Dominion Energy Kewaunee, Inc.; Kewaunee Power Station

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of operating license DPR–43, which authorizes Dominion Energy Kewaunee, Inc. (DEK), to operate the Kewaunee Power Station (KPS), at 1772 megawatts thermal. The renewed license would authorize the applicant to operate KPS for an additional 20 years beyond the period specified in the current license. KPS is located near Kewaunee, WI, and its current operating license expires on December 21, 2013.

DEK submitted the application dated August 14, 2008, pursuant to Title 10, Part 54, of the *Code of Federal Regulations* (10 CFR Part 54), to renew operating license DPR–43 for KPS. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on August 29, 2008 (73 FR 51023).

The Commission's staff has determined that DEK has submitted sufficient information in accordance with 10 CFR Sections 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and the application is therefore acceptable for docketing. The current Docket No. 50–305, for operating license DPR–43, will be retained. The determination to accept the license renewal application for docketing does not constitute a determination that a renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR Part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding the environmental scoping meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *PDR@nrc.gov*. If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR Parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the

contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for KPS are available for public inspection at the Commission's PDR, located at One

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML082341038. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR@nrc.gov*.

The NRC staff has verified that a copy of the license renewal application is also available to local residents near KPS, at the Kewaunee Public Library, 822 Juneau St., Kewaunee, WI 54216.

Dated at Rockville, Maryland, this 25th day of September, 2008.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–23090 Filed 9–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3392]

Honeywell International, Inc.; Honeywell Metropolis Works; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 30, Appendix C, for Materials License No. SUB–456, issued to Honeywell International, Inc. (Honeywell or the licensee), for operation of the Honeywell Metropolis Works, located in Metropolis, Illinois. As required by 10 CFR 51.21, the NRC has prepared this environmental assessment and finds that granting the exemption request will have no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow Honeywell an extension of a one-year exemption, previously granted by NRC via letter dated May 11, 2007, from a portion of the financial test in 10 CFR 30, Appendix C, which requires that Honeywell's year end tangible net worth be equal to at least ten times its total decommissioning liabilities. The exemption granted by NRC allowed Honeywell to include goodwill in the determination of tangible net worth and was contained in License Condition (LC) –27 in its Materials License No. SUB–526 renewed on May 11, 2007. The proposed action is in accordance with the licensee's application dated April 11, 2008, as supplemented by letter dated May 15, 2008.

The Need for the Proposed Action

The proposed action would allow Honeywell an extension of a previously approved exemption from the same portion of the financial test in 10 CFR 30, Appendix C, until the earlier occurrence of (1) May 11, 2009, or (2) the effective date of a final rule amending 10 CFR Part 30 consistent with the proposed rule published in the **Federal Register** on January 22, 2008.

Since May 26, 1994, Honeywell has provided a corporate self-guarantee as financial assurance for decommissioning as required by 10 CFR Part 30 Appendix C (as made applicable by 10 CFR Part 40.36(e)(2)). However, in a letter dated November 3, 2006, Honeywell notified NRC that it was unable to meet the tangible net worth part of the financial test as required by 10 CFR Part 30 Appendix C. The regulations require, among other things, that the licensees have tangible net worth of at least 10 times the decommissioning obligation. Honeywell's tangible net worth no longer meets the 10 to 1 ratio test, which means that absent an exemption, it would no longer be eligible to use the self-guarantee. The regulations require that Honeywell provide alternate financial assurance within 120 days after notifying the NRC that it is no longer qualified to use the self-guarantee.

In a letter dated December 1, 2006, Honeywell submitted a request under the provisions of 10 CFR 40.14 for an exemption from 10 CFR 30, Appendix C, that it be allowed to include goodwill in the determination of tangible net worth for the purpose of the ratio test. On May 11, 2007, NRC approved the renewal of Honeywell Materials License No. SUB–456 and documented its review in a Safety Evaluation Report (SER) enclosed with the renewed license. In Section 11.5 of this SER, Honeywell was granted a one-year exemption from the tangible net worth portion of the financial test which is stipulated in 10 CFR Part 30 Appendix C, Section II. This exemption allowed Honeywell to use goodwill in its calculation of net worth. This exemption was granted based on many factors that were documented in the SER including Honeywell's bond rating of ''A'' as assigned by Standard & Poor's. The SER outlined that a company with an ''A'' bond rating had a relatively low probability of default, and that this default rate was almost non-existent during any given one-year time period.

As Honeywell's one-year exemption expired on May 11, 2008, Honeywell seeks to extend this exemption until the earlier of (1) May 11, 2009 (*i.e.* , an additional one year period) or (2) the effective date of a final rule amending 10 CFR Part 30 consistent with the proposed rule published in the **Federal Register** on January 22, 2008.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes the proposed action to be acceptable. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption request dated April 11, 2008.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in additional licensee resources being expended on the alternate financial assurance methods which would increase the likelihood that funds for decommissioning will not be available when needed.

Alternative Use of Resources

The action does not involve the use of any different resources than those

previously considered in the Environmental Assessment for Renewal of NRC License No. SUB–526 for the Honeywell Specialty Materials Metropolis Work Facility, dated June 30, 2006.

Agencies and Persons Consulted

On August 6, 2008, the staff consulted with the Illinois State official, Gerald Steele of the Illinois Environmental Protection Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further Information

For further details with respect to the proposed action, see the licensee's letter dated April 11, 2008, as supplemented on May 15, 2008. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of August 2008.

For the Nuclear Regulatory Commission

Michael D. Tschiltz,

Acting Director, Division of Fuel Cycle Safety and Safeguards, Office of Material Safety and Safeguards.

[FR Doc. E8–23107 Filed 9–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413; Renewed License No. NPF–35]

In the Matter of Duke Energy Carolinas, LLC; North Carolina Electric Membership Corporation; Saluda River Electric Cooperative, Inc. (Catawba Nuclear Station, Unit 1); Order Approving Direct Transfer of License and Approving Conforming Amendment

I.

Duke Energy Carolinas, LLC (the licensee), the North Carolina Electric Membership Corporation (NCEMC/the licensee), and the Saluda River Electric Cooperative, Inc. (SREC), are the owners of Catawba Nuclear Station, Unit 1 (Catawba 1). With respect to their ownerships, they are coholders of Renewed Facility Operating License No. NPF–35. Catawba 1 is located in York County, South Carolina.

II.

By application dated December 20, 2007, as supplemented by letter dated May 29, 2008, Duke Energy Carolinas, LLC, requested on behalf of itself, NCEMC and SREC, pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.80 (10 CFR 50.80), that the Nuclear Regulatory Commission (NRC) consent to certain license transfers to permit the direct transfer of the 18.75 percent undivided ownership interest of SREC in Catawba 1, to the Duke Energy Carolinas, LLC, a current owner and operator, and NCEMC, a current owner. According to the application for approval filed by the licensees, following approval, Duke Energy Carolinas, LLC will purchase 71.96 percent of the SREC's interest in Catawba 1 (*i.e.*, 13.49 percent of SREC's undivided ownership interest) and NCEMC will purchase 28.04 percent of SREC's interest in Catawba 1 (*i.e.*, 5.26 percent of SREC's undivided ownership interest). Duke Energy Carolinas, LLC will remain responsible for the operation and maintenance of Catawba 1.

Approval of the direct transfer of the facility operating license was requested by Duke pursuant to 10 CFR 50.80. A notice entitled,''Notice of Consideration of Approval of the Proposed Transfer of the Catawba Nuclear Station, Unit 1, Renewed Facility Operating License No. NPF–35 and Conforming Agreement, and Opportunity for a Hearing Regarding Transfer of the Saluda River Electric Cooperative, Inc.'s Undivided Ownership Interest in Catawba Nuclear Station, Unit 1, to Duke Energy Carolinas, LLC, a Current Owner and Operator, and North Carolina Electric Membership Corporation, a Current Owner,'' was published in the **Federal Register** on July 21, 2008 (73 FR 42375). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the U.S. Nuclear Regulatory Commission (NRC) shall give its consent in writing. Upon review of the information in the licensees' application, and other information before the Commission, the NRC staff has determined that Duke Energy Carolinas, LLC, and NCEMC are qualified to hold the license to the extent proposed to permit the transfer of SREC's 18.75 percent undivided ownership interest in Catawba 1 to Duke Energy Carolinas, LLC, (13.49 percent) and NCEMC (5.26 percent), and that the transfers of the license are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated September 25, 2008.

III

Accordingly, pursuant to Sections 161b, 161i, 161.o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding

the proposed direct license transfer is approved, subject to the following conditions:

1. At the time of closing of the license transfer, SREC shall transfer to Duke Energy Carolinas, LLC's Master Decommissioning Trust, the proportional amount of SREC's decommissioning funds corresponding to the proportionate ownership interest being transferred (approximately 13.49 percent of SREC's 18.75 percent interest in Catawba 1).

2. At the time of closing of the license transfer, SREC shall transfer to the NCEMC decommissioning fund, the proportional amount of SREC's decommissioning fund corresponding to the proportionate ownership interest being transferred (approximately 5.26 percent of SREC's 18.75 percent interest in Catawba 1).

It is further ordered that consistent with 10 CFR 2.1315(b), the license amendment that makes a change, as indicated in Enclosure 3 to the cover letter forwarding this Order, to reflect the subject direct transfer, is approved. The amendment shall be issued and made effective at the time the proposed direct transfer action is completed.

It is further ordered that after receipt of all required regulatory approvals of the proposed direct transfer action, Duke shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 2 business days prior to the date of the closing of the direct transfer. Should the proposed direct transfer not be completed by September 30, 2009, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073580264), as supplemented by letter dated May 29, 2008 (ADAMS Accession No. ML081540469), 2008, and the Safety Evaluation dated September 25, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the ADAMS public electronic reading room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 25th day of September 2008.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E8–23091 Filed 9–30–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its August 13, 2007, application, as supplemented by letter dated June 19, 2008, for proposed amendments to Facility Operating License Nos. 325 and 50–324 for Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), located in Brunswick County, North Carolina.

The proposed amendment would have revised BSEP's Technical Specification (TS) Table 3.3.1.2–1, ''Source Range Monitor [SRM] Instrumentation,'' to add a footnote that specifies the required locations of operable SRMs in Mode 5 during core alternations, and to make an administrative correction to Surveillance Requirement 3.3.1.2.2 in the Unit 1 TSs.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 26, 2008 (73 FR 1025). Subsequently, the licensee determined to no longer pursue NRC approval of the proposed license amendments and by letter dated September 22, 2008, the licensee withdrew the request.

For further details with respect to this action, see the application for amendments dated August 13, 2007, as supplemented by letter dated June 19, 2008, and the licensee's letter dated September 22, 2008, which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25th day of September 2008.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–23093 Filed 9–30–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding Eligibility of Bolivia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the President's proposed action to suspend Bolivia's designation as a beneficiary country under the Andean Trade Preference Act (ATPA), as amended, and the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA), based on the Bolivian government's failure to meet the programs' counternarcotics cooperation criteria. The President has directed the U.S. Trade Representative to publish this notice and, in accordance with the statute, the U.S. Trade Representative seeks public comment and will hold a public hearing on the proposed action. Comments must be submitted in accordance with the requirements set forth below.

DATES: The deadline for submission of comments is October 31, 2008. The hearing will be held on October 23, 2008.

ADDRESSES: Submit comments by electronic mail to *FR0812@ustr.eop.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–6143. The public is strongly encouraged to

submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the ATPDEA (Pub. L. 107–210), the Andean Trade Preferences Extension Act (Pub. L. 109–432), and the Andean Trade Preferences Extension Act (Pub. L. 110–191) provides trade benefits for countries that have been designated by the President as beneficiary countries. The ATPDEA expanded the tariff benefits available to beneficiary countries of ATPA to certain articles, including certain textile and apparel products. Bolivia is currently a beneficiary country for purposes of the ATPA and ATPDEA. The President may withdraw or suspend the designation of a country as a beneficiary country or withdraw, suspend, or limit the application of duty-free treatment to any eligible article if the President determines that as a result of changed circumstances, the country is not satisfying the statutory eligibility criteria. At least 30 days before taking one of the aforementioned actions, the President must publish a notice in the **Federal Register** of the action the President proposes to take; during this 30-day period, the USTR is required to accept public comments and hold a public hearing on the proposed action.

1. Eligibility Criteria

As noted above, Bolivia currently receives preferential tariff treatment under ATPA and ATPDEA. Pursuant to 19 U.S.C. 3202(d), in deciding whether to designate any country as a beneficiary country under ATPA, the President is required to take into account inter alia:

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) of the Foreign Assistance Act of 1961 for eligibility for United States assistance.

In addition, among the criteria set forth in 19 U.S.C. 3203(b)(6)(B) that the President is required to take into account in deciding whether to designate a country as eligible for the expanded benefits under ATPDEA is:

(v) The extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

On September 15, 2008, pursuant to section 706(2)(A) of the Foreign Relations Authorization Act, the President designated Bolivia as a country that has failed demonstrably during the previous 12 months to adhere to its obligations under international counternarcotics agreements and to take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961.

2. Public Comments and Hearing

USTR invites written comments and/or oral testimony of interested persons on the proposed suspension of Bolivia's designation as a beneficiary country under the Andean Trade Preference Act, as amended and the Andean Trade Promotion and Drug Eradication Act. Written comments must be received no later than October 31, 2008. A hearing will be held on October 23, 2008, at 10 a.m., in Rooms 1 and 2 at 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of the intention by noon, October 16, 2008. The notification should include: (1) The name, address and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Trade Policy Staff Committee.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Comments must be submitted, in English, to the Andean Subcommittee of the Trade Policy Staff Committee (TPSC) as soon as possible, but not later than 5 p.m., October 31, 2008.

In order to facilitate prompt processing of submissions, USTR strongly recommends that comments be set out in digital files attached to e-mails transmitted to the following address: *FR0812@ustr.eop.gov*. If you are unable to provide comments by e-mail, submissions may be made by facsimile.

Comments should be provided in a single copy and must not exceed 30 single-spaced standard letter-size pages in 12-point type or a digital file size of three megabytes. E-mails should include the following subject line: ''Review of Bolivia's Designation as a Beneficiary Country Under the ATPA and ATPDEA.'' The transmittal message or cover letter accompanying a submission must be set out exclusively in the digital file attached to the e-mail transmission—not in the message portion of e-mail—and must include the sender's name, organization name, address, telephone number and e-mail address.

Digital files must be submitted in one of the following formats: WordPerfect (.WPD), Adobe (.PDF), MSWord (.DOC), or text (.TXT) files. Comments may not be submitted as electronic image files or contain embedded images, e.g., ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''. Spreadsheet data may be submitted as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data accompanying the submission should be set out in the same file as the submission itself, and not in a separate file.

If a submission contains business confidential information that the submitter wishes to protect from public disclosure, the confidential submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page. In addition, the submission must be accompanied by a non-confidential version that indicates, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''. Business confidential comments that are submitted without the required markings or that are not accompanied by a properly marked non-confidential version as set forth above may not be accepted or may be treated as public documents.

The digital file name assigned to any business confidential version of a submission should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the person (government, company, union, association, etc.) making the submission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E8–23136 Filed 9–30–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 498, File No. 270–435, OMB Control No. 3235–0488.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Act'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 498 of the Securities Act of 1933 (17 CFR 230.498) permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) (''funds'') to provide investors with a ''profile'' that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 16 initial profiles and 274 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 20 portfolios filed annually on initial profiles and 343 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 3,930, representing an increase of 749 hours from the prior estimate of 3,181. The increase in burden hours is attributable to the higher number of profiles actually prepared and filed as compared to the previous estimates.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

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: September 24, 2008

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22969 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28407; 812–13531]

Aberdeen Asset Management Inc., et al.; Notice of Application

September 25, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Aberdeen Asset Management Inc. (the ''Adviser''), Aberdeen Funds (the ''Trust'') and Aberdeen Fund Distributors, LLC (the ''Distributor'').

FILING DATES: The application was filed on May 8, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 20, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Lucia Sitar, Aberdeen Asset Management Inc., 1735 Market Street, 37th Floor, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Attorney Adviser, at (202) 551–6826, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Adviser is organized as a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as the investment adviser to each existing series of the Trust (together with future series of the Trust, the ''Funds''). The Distributor, a wholly-owned subsidiary of the Adviser, is organized as a Delaware limited liability company and is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act''). The Distributor serves as the principal underwriter to each Fund. The Trust, the Funds, and all other existing or future open-end management investment companies and their series advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser that are registered under the Act, and that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trust, collectively are referred to as the ''Applicant Funds.'' Applicants request the exemption to the extent necessary to permit any Applicant Fund that may invest in other Applicant Funds in reliance on Section 12(d)(1)(G) of the

Act, and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

2. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees or directors will review the advisory fees charged by the Applicant Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Applicant Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23044 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28405; 812–13521]

Delaware Management Business Trust, et al.; Notice of Application

September 24, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Delaware Group Adviser Funds, Delaware Group Cash Reserve, Delaware Group Equity Funds I, Delaware Group Equity Funds II, Delaware Group Equity Funds III, Delaware Group Equity Funds IV, Delaware Group Equity Funds V, Delaware Group Foundation Funds, Delaware Group Global & International Funds, Delaware Group Government Fund, Delaware Group Income Funds, Delaware Group Limited-Term Government Funds, Delaware Group State Tax-Free Income Trust, Delaware Group Tax-Free Fund, Delaware Group Tax-Free Money Fund, Delaware Pooled Trust, Delaware VIP Trust, Voyageur Insured Funds, Voyageur Intermediate Tax-Free Funds, Delaware Investments Municipal Trust (formerly Voyageur Investment Trust), Voyageur Mutual Funds, Voyageur Mutual Funds II, Voyageur Mutual Funds III and Voyageur Tax-Free Funds (collectively, the ''Trusts''), Delaware Management Business Trust (''DMBT''), on behalf of its series, Delaware Management Company (the ''Adviser'') and Delaware Distributors, L.P. (the ''Underwriter'').

FILING DATE: The application was filed on April 15, 2008, and amended on September 19, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 20, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Bruce G. Leto, Esq. and/or Alison M. Fuller, Esq., Stradley, Ronon, Stevens & Young, LLP, 2600 One Commerce Square, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. Each Trust is organized as a Delaware statutory trust and is registered as an open-end management investment company under the Act. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment companies and their series that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts and which invests in other registered open-end management investment companies in reliance on section 12(d)(1)(G) of the Act, and which is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (together with the Trusts and their series, the ''Applicant Funds''), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

2. The Adviser is a series of DMBT, which is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser serves as the investment adviser to each series of the Trust. DMBT is a Delaware statutory trust and an indirect, wholly owned subsidiary of Delaware Management Holdings, Inc., which is an indirect subsidiary of the Lincoln National Corporation. The Underwriter serves as principal underwriter for all the mutual funds in the Delaware Investments Family of Funds, and is a registered broker-dealer under the Securities Exchange Act of 1934. The Underwriter is organized as a limited partnership under Delaware law, and Delaware Distributors, Inc., a Delaware corporation, is its general partner. Delaware Distributors, Inc. is a wholly owned indirect subsidiary of Delaware Management Holdings, Inc., and all of the limited partnership interests of the Underwriter are owned indirectly by Delaware Management Holdings, Inc.

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees or directors will review the advisory fees charged by the Applicant Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments. Applicants assert that permitting the Applicant Funds to

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23042 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28406; 812–13506]

Van Kampen Retirement Strategy Trust, et al.; Notice of Application

September 25, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

APPLICANTS: Van Kampen Retirement Strategy Trust (''VK Trust''), Van Kampen Asset Management (''VKAM'' or ''Adviser'') and Morgan Stanley Investment Management Limited (''MSIM Ltd.'').

FILING DATES: The application was filed on March 7, 2008 and amended on September 19, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2008, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: VK Trust and VKAM, 522 Fifth Avenue, New York, New York 10036; MSIM Ltd., 25 Bank Street, Canary Wharf, London, United Kingdom E14 4AD.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The VK Trust, organized as a Delaware statutory trust, is registered under the Act as an open-end management investment company. The VK Trust currently offers ten series, each with its own investment objective and policies (the ''VK Funds'').[1] The Adviser, a wholly-owned subsidiary of Van Kampen Investments Inc., which is an indirect wholly-owned subsidiary of Morgan Stanley, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser serves as the investment adviser to each VK Fund. MSIM Ltd., a wholly-owned subsidiary of Morgan Stanley, is an investment adviser registered under the Advisers Act and serves as subadviser for certain VK Funds.

2. Applicants request relief to permit certain VK Funds (each such VK Fund, a ''Fund of Funds'') to invest in: (a) other VK Funds (''Affiliated Underlying Funds''), and (b) registered open-end management investment companies and registered unit investment trusts (''UITs'') that are not part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the VK Funds (''Unaffiliated Underlying Funds,'' and together with the Affiliated Underlying Funds, the ''Underlying Funds''). The Unaffiliated Underlying Funds may include UITs (''Unaffiliated Trusts'') and open-end management investment companies (''Unaffiliated Funds'') registered under the Act. The relief also would permit the Underlying Funds, their principal underwriter and any broker or dealer to sell the shares of the Underlying Funds to the Fund of Funds. Certain of the Unaffiliated Underlying Funds may have received exemptive relief to sell their shares on a national securities exchange at negotiated prices (''ETFs''). Each Fund of Funds may also invest in other securities and financial instruments that are not issued by registered investment companies and which are consistent with its investment objective. Applicants state that each Fund of Funds seeks to provide, in a single investment vehicle, an asset allocation strategy designed for investors planning to retire on or about a specific year or to provide income for investors who have already retired.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

[1] Applicants request that the order extend to any other existing or future registered open-end management investment companies and their series that are part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as VK Trust and are, or may in the future be, advised by the Adviser or any existing or future entity controlling, controlled by, or under common control with the Adviser. All entities that currently intend to rely on the requested order are named as applicants and any other entity that relies on the order in the future will comply with the terms and conditions of the application.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell their shares to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Underlying Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Underlying Fund, applicants submit that: (a) The Adviser; any person controlling, controlled by or under common control with the Adviser; and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the ''Group''); and (b) MSIM Ltd. and any investment adviser to a Fund of Funds that meets the definition in section 2(a)(20)(B) of the Act (''Subadviser''); any person controlling, controlled by or under common control with the Subadviser; and any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the ''Subadviser Group'') will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose to prevent a Fund of Funds and its affiliated entities from taking advantage of an Unaffiliated Underlying Fund with respect to transactions between the entities by precluding a Fund of Funds and its Adviser, Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Fund of Funds Affiliate'') from causing any existing or potential investment by the Fund of Funds in an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Unaffiliated Underlying Fund Affiliate''). In addition, no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Subadviser, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. To further ensure that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, prior to its investment in the shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Underlying Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject any investment by a Fund of Funds.[2]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to approval of any investment advisory contract under section 15 of the Act, the board of trustees (''Board'') of each Fund of Funds, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii)

[2] An Unaffiliated Fund, including an ETF, would retain its right to reject an initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement.

engage in interfund borrowing and lending transactions. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain clear, concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Underlying Funds might be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person, security or transactions or any class or classes of persons, securities or transactions, from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed structure satisfies the standards for relief under sections 17(b) and 6(c) of the Act.[3] Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[4] Applicants state that the proposed investment will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Subadviser Group will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to the Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Underlying Fund Affiliate.

3. Each Fund of Funds Board, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to ensure that the Adviser and the Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures

[3] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[4] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Unaffiliated Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a Fund of Funds purchases or redeems shares from an Unaffiliated Underlying Fund that is an ETF and an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Unaffiliated Fund were made.

8. Prior to its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any investment advisory contract under section 15 of the Act, each Fund of Funds Board, including a majority of the Disinterested Trustees, will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Funds in which the Fund of Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Adviser, or an affiliated person of the Adviser, from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Subadviser or an affiliated person of the Subadviser by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23043 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58630; File No. 4–443]

Joint Industry Plan; Order Granting Permanent Approval to Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

September 24, 2008.

I. Introduction

On August 12, 2008, August 18, 2008, August 15, 2008, August 13, 2008, August 8, 2008, August 14, 2008, August 14, 2008, and August 18, 2008, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NYSE Arca Inc.

(''NYSE Arca''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Options Clearing Corporation (''OCC'') respectively, filed with the Securities and Exchange Commission (''Commission''), pursuant to section 11A of the Securities Exchange Act [1] of 1934 (''Act'') and Rule 608 thereunder,[2] Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (''the Options Listing Procedures Plan'' or ''OLPP'').[3] Amendment No. 2 would provide a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of Long-term Equity AnticiPation securities (''LEAP'' or ''LEAPS'') options.

On August 19, 2008, the Commission issued notice of and approved Amendment No. 2 on a temporary basis not to exceed 120 days, and solicited comment on the proposal.[4] The Commission received no comment letters in response to the Temporary Approval Order. This order approves Amendment No. 2 on a permanent basis.

II. Description of the Proposal

Currently, Plan Sponsors may list a new LEAP expiration year at the appropriate time without any consideration as to the activity level of the class of options. Amendment No. 2 proposes to apply a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAP options.

By agreeing to a minimum volume threshold per underlying class to qualify for an additional year of LEAP series, the Plan Sponsors intend to mitigate the number of option series available for trading. It is intended that this will in turn mitigate quote traffic, because Participants will not be submitting quotes in the not-listed series. The Plan Sponsors have agreed on a minimum volume threshold of 1,000 contracts national average daily volume in the preceding three calendar months (excluding volume in LEAP and FLEX series) to qualify for the introduction of a new LEAP expiration year.[5]

The Amendment does not restrict the introduction of a new LEAP expiration year in Index options, or in classes that have had options products trading at any exchange for less than six months. In addition, it also does not restrict, for a particular options class, the introduction of new LEAP series with an expiration year that has already been introduced by at least one Exchange.

III. Discussion

After careful review, the Commission finds that Amendment No. 2 is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that Amendment No. 2 to the OLPP is consistent with section 11A of the Act [7] and Rule 608 thereunder [8] in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Specifically, the Commission believes that by adopting a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year for LEAP series, the options exchanges should reduce the number of option series available for trading, and thus may reduce increases in the options quote rate because market participants would not be submitting quotes in the not-yet-available LEAP series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve Amendment No. 2 to the OLPP on a permanent basis.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,[9] and Rule 608 thereunder,[10] that proposed Amendment No. 2 to the OLPP be, and it hereby is, approved on a permanent basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22965 Filed 9–30–08; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was originally proposed by the Amex, CBOE, ISE, OCC, Phlx, and Pacific Exchange, Inc. (k/n/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, BSE was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, Nasdaq was added as a sponsor to the OLPP. *See* Securities Exchange Act Release No. 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008).

[4] *See* Securities Exchange Act Release No. 58385 (August 19, 2008), 73 FR 50375 (August 26, 2008) (''Temporary Approval Order'').

[5] The Plan Sponsors represented that, in 2007, if this proposal had been in effect, the industry would not have added a new expiration year in 550 underlying securities, which would have reduced the overall number of listed series (LEAP and non-LEAP series) by 8%. These LEAP series generated only .43% of industry trading volume in a typical (non-expiration) sample week.

[6] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8962; 34–58657; File No. 4–567]

Roundtable on Modernizing the SEC's Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On October 8, 2008 from 9 a.m. to 1 p.m., the Securities and Exchange Commission will hold a roundtable to discuss ways in which its current disclosure system can be modernized to provide investors more useful and timely information to help them make investment choices. The roundtable will be organized as two panels. The panels will be moderated by Commission staff and will include investor representatives, company officials, information intermediaries, practitioners, and academics. The roundtable is part of the Commission's 21st Century Disclosure Initiative.

The roundtable will be held in the auditorium of SEC headquarters at 100 F Street, NE., Washington, DC, from 9 a.m. until approximately 1 p.m. The roundtable will be open to the public with seating on a first-come, first-served basis. The roundtable discussions will be Webcast on the Commission's Web site at *http://www.sec.gov*. The roundtable agenda and other related materials, including a list of participants and moderators, will be accessible at *http://www.sec.gov/disclosureinitiative*. The Commission welcomes comments regarding any of the topics to be addressed at the roundtable and is particularly interested in comments responding to the questions that are set forth below.

DATES: We must receive comments on or before October 22, 2008.

ADDRESSES: You may submit your comments by any of the following methods:

Electronic Comments

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–567 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.

Your submission must refer to File No. 4–567. You should include this file number on the subject line if you send your comment by e-mail. Please use only one method of submission. The Commission will post all comments on its Web site at *http://www.sec.gov/rules/other.shtml*. Comments will also be available for public 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. All comments received will be posted without change. Because we do not edit personal identifying information from submissions, you should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Matthew Reed at (202) 551–4144, 21st Century Disclosure Initiative, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3561.

SUPPLEMENTARY INFORMATION: The Federal securities acts require certain operating and investment companies, and certain investors, to submit transactional, financial, governance-related, and other information to the Commission. Much of this information is made available to the public and investors. The Commission's existing disclosure system depends primarily on forms that collect, organize, and convey the required information. Companies and other filers prepare the forms and file them with the Commission, which stores them and makes them available to the public using its EDGAR database. The Commission recently announced that it is developing a new platform, known as IDEA (Interactive Data, Electronic Applications), to succeed EDGAR. IDEA's architecture will allow disclosure information to be submitted, stored, accessed, and disseminated more efficiently.

In June 2008, Chairman Christopher Cox launched the 21st Century Disclosure Initiative and called for a fundamental rethinking of our current disclosure system, which could result in transitioning away from a forms-based approach. The principal objective of the Initiative is to enhance the usefulness of disclosure to investors. Improved efficiency for preparers of disclosure also will be important. The Initiative will include a careful review of existing disclosure, the objectives of disclosure, and whether and how disclosure may be improved through the application of modern technology and practices. Based on its internal efforts and other information, including the views expressed at the October 8, 2008, roundtable and comments received regarding the roundtable, Initiative staff will prepare a report that describes a modernized disclosure system and recommends future action for a transition to the new system. The proposed new system will use modern information technology to collect, manage, and provide structured data or information that is accessible, and easier to use, while providing the Commission with tools to better fulfill its mission of protecting investors, maintaining orderly markets, and facilitating the formation of capital.

This system could take the form of a ''company file system'' that would collect core information about a company or fund in a centrally and logically organized structured data file. Companies would supplement that information with the current, periodic, and transactional information that is currently required by the Commission's disclosure regulations. Structured data, including data tagging, and IDEA's versatile architecture should make disclosure information dynamic, accessible, and easier to use. Initiative staff will analyze whether a company file system would provide investors with improved presentation and access to information; reduce redundancy and complexity for filers, harness the ability of technology to drive down costs and reduce errors; and aid the Commission's development of more powerful electronic regulatory and enforcement tools. A company file system would also allow for the Commission to consider ways to further integrate disclosure.

The Roundtable on Modernizing the Securities and Exchange Commission's Disclosure System will be organized into two panels. The first panel will explore the data, technology, and processes that companies and other filers use in satisfying their Commission disclosure obligations. It will also consider the data and technology that investors use in making their investment decisions. The second panel will consider how the Commission could better organize and operate its disclosure system so that companies enjoy efficiencies and investors have better access to high-quality information.

The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable and would be particularly interested in comments on the specific questions set forth below.

I. General Issues

a. Should the Commission make changes to its current forms-based disclosure system? Please explain why or why not.

b. What are the key issues to be considered in the review of the Commission's disclosure system? Are particular aspects of the system and process especially useful and well executed, and are particular aspects especially in need of improvement?

c. What are the purposes of issuer disclosure from the perspective of investors, filers, and regulators?

II. Specific Issues

a. The Market's Use of Disclosure Information

i. How do operating and investment companies collect, summarize, analyze, file, and disseminate the information that is submitted to the Commission?

ii. How do operating and investment companies submit disclosure and reporting information to the Commission? How have these methods changed during the last 15 years, particularly after filing via EDGAR was fully implemented? How could the Commission's system be changed to reduce burdens and create efficiencies, consistent with investor protection?

iii. How do investors retrieve and use the disclosure information that companies submit to the Commission? How could this information be better presented, and more easily retrieved and used through technological improvements?

iv. What disclosure information that companies submit to the Commission is used by investors to make investment decisions? Is any information that companies submit to the Commission not used? What information that is not required to be filed or furnished with the Commission do investors and others use to make investment decisions or give investment advice?

b. The Commission's Current Disclosure System

Does the Commission's current disclosure system present difficulties? What difficulties can be attributed to technological problems? Which can be attributed to regulatory or statutory problems?

c. Modernizing the Commission's Disclosure System

i. How should the Commission's disclosure system be modernized? One possibility is a company file system. What alternative systems should be considered? What different or additional benefits might these alternatives provide?

ii. How should a modern disclosure system, such as a company file system, be organized, and how could it improve the way disclosure information is submitted and used?

iii. What features should any modernized disclosure system provide in order to serve the needs of filers, investors, regulators, and other users of information? Why?

iv. Data tagging using XBRL, or eXtensible Business Reporting Language, is one way, but we understand there are other ways to structure data. What alternative ways could be used by companies to submit structured data to the Commission?

v. What are the costs and benefits to investors and other market participants of structuring non-financial disclosures, including, for example, data tagging?

vi. What time frame would be appropriate for implementing a company file system?

vii. What benefits and costs to preparers and users of information would accompany the implementation of modernized disclosure system, such as a company file system, that requires all, or virtually all, data to be filed in a structured format? Would such a system be more useful to some investors, such as small or less sophisticated investors? Would some investors be harmed by such a system? Would larger companies benefit more than smaller companies? Would costs fall disproportionately on one group of companies?

viii. Are any changes to the Commission's disclosure regulations required for a transition to a company file system? How could these changes be identified?

Dated: September 26, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23105 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 2, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 2, 2008 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
A collection matter;
Amicus consideration;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 26, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23048 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be published].

STATUS: Open meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, October 1, 2008 at 10 a.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Open Meeting scheduled for Wednesday, October 1, 2008 has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: September 26, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23074 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Wendt-Bristol Health Services Corp.; Order of Suspension of Trading

September 26, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wendt-Bristol Health Services Corp. (''Wendt-Bristol'') because it has not filed any periodic reports since the period ended March 31, 2000. Wendt-Bristol is quoted on the Pink Sheets operated by Pink OTC Markets, Inc. under the ticker symbol WMDB.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on September 26, 2008, through 11:59 p.m. EDT on October 9, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–23086 Filed 9–26–08; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58623; File No. SR–BATS–2008–004]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Consolidating Into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

September 23, 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 September 17, 2008, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 14.1, entitled ''Unlisted Trading Privileges'' to consolidate into a single rule certain requirements for trading products on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new product proposals previously approved by the Commission.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis, for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 purpose of the proposed rule change is to amend the Exchange's rules to consolidate into a single rule certain requirements for trading products on the Exchange pursuant to UTP that have been established in various new product proposals previously approved by the Commission. The Exchange proposes to amend BATS Rule 14.1 to set forth rules regarding the extension of UTP to a security that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted. The Exchange will file with the Commission a Form 19b–4(e) with respect to any such security that is a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act.[5] In addition, any new derivative securities product traded on the Exchange pursuant to the proposed BATS Rule 14.1 will be subject to the following criteria.

Proposed BATS Rule 14.1(c)(2) provides that the Exchange will distribute an information circular prior to the commencement of trading in such new derivative securities products, which generally will include the same information as the information circular provided by the listing exchange, including: (1) The special risks of trading the new derivative securities product; (2) the Exchange's rules that will apply to the new derivative securities product, including the suitability rule;[6] (3) information about the dissemination of the value of the underlying assets or indexes; and (4) the risk of trading during the Exchange's pre-opening session due to the lack of calculation or dissemination of the intraday indicative value or a similar value.[7]

Proposed BATS Rule 14.1(c)(3)(A) reminds Members[8] that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (''Securities Act''), unless the new derivative securities product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'')[9] and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. The Exchange will inform its Members of the application of the provisions of this subparagraph to a particular new securities derivative product governed by the 1940 Act by means of an information circular.

Proposed BATS Rule 14.1(c)(4) addresses trading halts in new derivative securities products traded on the Exchange pursuant to UTP. Proposed BATS Rule 14.1(c)(4)(A) provides that the Exchange, upon notification by the listing market of a halt due to a temporary interruption in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument, will immediately halt trading in that product on the Exchange. If the intraday indicative value (or a similar value) or the value of the underlying index or instrument continues not to be calculated or widely available at the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product on that day. If an interruption in the calculation or wide dissemination of the intraday indicative value (or a similar value) or the value of the underlying index or instrument of a series continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the intraday interactive value (or a similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market.[10]

Additionally, proposed BATS Rule 14.1(c)(4)(B) provides that, for a new derivative securities product where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a ''disclosed portfolio'') is disseminated, the Exchange will immediately halt trading in such security upon notification by the listing market that the net asset value, and, if applicable, such disclosed portfolio, is not being disseminated to all market participants at the same time. The Exchange may resume trading in the new derivative securities product only when trading in such security resumes on the listing market.

Proposed BATS Rule 14.1(c)(5) provides for restrictions for any Member registered as a Market Maker (''Restricted Market Maker'') in a new derivative securities product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, proposed BATS

[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)(6).

[5] 17 CFR 240.19b–4(e).

[6] *See* BATS Rule 3.7.

[7] BATS's pre-opening session is from 8 a.m. to 9:30 a.m. Eastern Time. BATS does not currently have a post market trading session.

[8] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[9] 15 U.S.C. 80a–24(d).

[10] The Exchange also has authority to suspend or halt trading under BATS Rule 11.1.

Rule 14.1(c)(5)(A) provides that a Restricted Market Maker in a new derivative securities product is prohibited from acting or registering as a market maker in any Reference Asset of that new derivative securities product or any derivative instrument based on a Reference Asset of that new derivative securities product (collectively, with Reference Assets, ''Related Instruments''). Proposed BATS Rule 14.1(c)(5)(B) provides that a Restricted Market Maker shall, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to the Exchange as required by this rule. Proposed BATS Rule 14.1(c)(5)(C) provides that, in addition to the existing obligations under Exchange rules regarding the production of books and records, a Restricted Market Maker shall, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded. Finally, proposed BATS Rule 14.1(c)(5)(D) provides that a Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.[11]

Lastly, BATS represents that the Exchange's surveillance procedures for new derivative securities products traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems. The Exchange will closely monitor activity in new derivative securities products traded on the Exchange pursuant to UTP to deter any improper trading activity. The proposed rule change also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (''CSSA'') with a market trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange's rule require the listing market to enter into a CSSA with such market.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, specifically, with the requirements of Section 6(b) of the Act.[12] In particular, for the reasons described above, the proposed changes are consistent with Section 6(b)(5) of the Act,[13] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by providing for the trading of securities, including new derivative securities products, on BATS pursuant to UTP, subject to consistent and reasonable standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or 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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

BATS has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the trading of new derivative securities products, subject to consistent and reasonable standards. Proposed BATS Rule 14.1 is closely modeled after similar rules of other national securities exchanges[16] and does not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.[17]

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–BATS–2008–004 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.

[11] As of the date of this filing, the Exchange does not have a market maker classification. However, the Exchange intends to amend its rules to adopt a market maker classification. Accordingly, the Exchange has incorporated the market maker prohibition set forth in proposed Rule 14.1(c)(5) in anticipation of that rule filing.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). The Commission notes that BATS has satisfied the five-day pre-filing notice requirement.

[16] *See* NSX Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR–NSX–2008–05); Phlx Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR–Phlx-2008–34); ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR–ISE–2007–99).

[17] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-BATS–2008–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS–2008–004 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22961 Filed 9–30–08; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58644; File No. SR–BATS–2008–005]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rulebook Chapter XI To Add Four New Rules Regarding the Registration and Obligations of Market Makers and Amend Rule 1.5 To Add Definitions of ''Market Maker'' and ''Market Maker Authorized Trader''

September 25, 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 September 19, 2008, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Chapter XI of the BATS Rulebook to add four new rules which would provide for the registration and obligations of market makers, as well as amending Rule 1.5 to add the definitions of ''Market Maker'' and ''Market Maker Authorized Trader.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 purpose of the proposed rule change is to provide Members the ability to register as Market Makers and to provide for the regulation of Market Makers. The process for registration as a Market Maker is contained in Proposed Rule 11.5, which provides that applicants must file applications in such form as the Exchange may prescribe. Applicants will be reviewed by the Exchange, which will consider factors including the capital, operations, personnel, technical resources, and disciplinary history of the applicant. Each Market Maker must have and maintain the minimum net capital of at least the amount required by Rule 15c3–1 of the Exchange Act.[4] Pursuant to the Proposed Rule, an applicant's registration as a Market Maker will become effective upon receipt by the Member of the Exchange's notice of approval of registration. The Proposed Rule also provides that the registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that the Market Maker substantially or continually failed to engage in dealings in accordance with Exchange Rules, if the Market Maker fails to meet the minimum net capital conditions, or the Market Maker fails to maintain fair and orderly markets.

Proposed Rule 11.6 provides for the registration and obligations of Market Maker Authorized Traders (''MMATs''). The Exchange can register a person as a MMAT upon receiving an application in the form prescribed, and MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees or other associated persons of Members who are registered as Market Makers. To be eligible for registration as a MMAT, a person must complete the training and other programs required by the Exchange and successfully complete the General Securities Representative Examination (Series 7). Market Makers must ensure that their MMATs are properly qualified to perform market making activities. The Exchange may suspend or withdraw the registration of a MMAT if the Exchange determines that the person has caused the Market Maker to fail to comply with the securities laws or rules of the Exchange, if the person fails to perform his or her responsibilities properly, or fails to maintain fair and orderly markets. If a MMAT is suspended, the Market Maker may not allow the person to submit orders. In addition, the registration of a MMAT may be withdrawn upon the written request of the Member for which the MMAT is registered.

Proposed Rule 11.7 provides for the registration of Market Makers in a security. A Market Maker may become registered in a newly authorized

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.15c3–1.

security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider the financial resources available to the Market Maker, the Market Maker's experience in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of clearing arrangements for the Market Maker's transactions, and the character of the market for the security. The Proposed Rule also provides that a Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination and may place other conditions on withdrawal and re-registration following withdrawal. The Exchange may suspend or terminate any registration of a Market Maker in a security whenever it determines that the Market Maker has not met any of its obligations or has failed to maintain fair and orderly markets.

Finally, Proposed Rule 11.8 sets out the obligations of Market Makers. In general, Market Makers must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The responsibilities of Market Makers include, among other things, maintaining continuous limit orders to buy and to sell for round lots in those securities in which the Market Maker is registered to trade. Market Makers will be responsible for the acts and omissions of its MMATs. If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealing as specified in this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of its registration. A Market Maker may apply to withdraw temporarily from its Market Maker status in the securities for which it is registered and must base this request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal.[5]

These proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

2. Statutory Basis

The Exchange believes the proposal is 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).[6] In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,[7] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by creating greater liquidity in the Exchange market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes 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 solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rules are based on the approved rules of another self-regulatory organization.[8] In addition, the Exchange believes that the proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[9] and paragraph (f)(6) of Rule 19b–4 thereunder.[10] In accordance with Rule 19b–4(f)(6)(iii),[11] the Exchange submitted 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.

Because the foregoing proposed rule change is non-controversial and 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[12] and Rule 19b–4(f)(6) thereunder.[13]

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.

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–BATS–2008–005 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–BATS–2008–005. 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

[5] *See* electronic mail from Anders Franzon, Associate General Counsel, BATS Trading, Inc., to Sarah Albertson, Attorney, Division of Trading and Markets, Commission, dated September 23, 2008.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* NSX Rules 1.5 and 11.5 through 11.8.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2008–005 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23041 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58643; File Nos. SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Adoption of NASD Rules 4000 Through 10000 Series and the 12000 Through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook; Order Approving Proposed Rule Change Relating to the Membership Waive-In Process for Certain New York Stock Exchange Members; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt the FINRA Rule 0100 Series (General Standards) in the Consolidated FINRA Rulebook; Order Approving Proposed Rule Change To Adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook; and Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Repeal NASD Rule 1130 and Incorporated Rules 405A, 440F, 440G and 447 as Part of the Process of Developing the Consolidated FINRA Rulebook

September 25, 2008.

I. Introduction

On May 23, 2008, the Financial Industry Regulatory Authority, Inc (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), filed with the Securities and Exchange Commission (''Commission'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the following NASD rules (which are part of the existing FINRA rulebook) as FINRA rules into a new consolidated rulebook (''Consolidated FINRA Rulebook''): The 4000 through 10000 Series and the 12000 through 14000 Series (collectively, the ''Marketplace and Procedural Rules Proposal''). The Marketplace and Procedural Rules Proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 23, 2008.[3] The Commission received no comments on the Marketplace and Procedural Rules Proposal. This order approves the Marketplace and Procedural Rules Proposal, as modified by Amendment No. 1.

On May 23, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, a proposed rule change relating to the membership waive-in process for certain New York Stock Exchange LLC (''NYSE'') members (''Waive-In Firms Proposal''). The Waive-In Firms Proposal was published for comment in the **Federal Register** on July 28, 2008.[4] The Commission received no comments on the Waive-In Firms Proposal. This order approves the Waive-In Firms Proposal.

On June 13, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, a proposed rule change to adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook (collectively, the ''Ethical Conduct and Fairness Opinion Rules Proposal''). The Ethical Conduct and Fairness Opinion Rules Proposal was published for comment in the **Federal Register** on July 10, 2008.[5] The Commission received no comments on this proposed rule change. This order approves the Ethical Conduct and Fairness Opinion Rules Proposal.

On June 16, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, a proposed rule change to adopt the FINRA Rule 0100 Series (General Standards) in the Consolidated FINRA Rulebook (''General Standards Proposal''). The General Standards Proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 7, 2008.[6] The Commission received no comments on the General Standards Proposal. This order approves the General Standards Proposal as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58176 (July 16, 2008), 73 FR 42844 (July 23, 2008) (SR–FINRA–2008–021) (''Release No. 34–58176'').

[4] *See* Securities Exchange Act Release No. 58206 (July 22, 2008), 73 FR 43808 (July 28, 2008) (SR–FINRA–2008–022).

[5] *See* Securities Exchange Act Release No. 58095 (July 3, 2008), 73 FR 39751 (July 10, 2008) (SR–FINRA–2008–028).

[6] *See* Securities Exchange Act Release No. 58245 (July 29, 2008), 73 FR 46106 (August 7, 2008) (SR–FINRA–2008–026).

On June 16, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, a proposed rule change to repeal NASD Rule 1130 and Incorporated NYSE Rules NYSE 405A, 440F, 440G and 477 as part of the process of developing the Consolidated FINRA Rulebook (collectively, the ''Miscellaneous Rules Proposal''). The Miscellaneous Rules Proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 4, 2008.[7] The Commission received no comments on the Miscellaneous Rules Proposal. This order approves the Miscellaneous Rules Proposal, as modified by Amendment No. 1.

II. Description

On July 30, 2007, the NASD and NYSE Regulation, Inc. (''NYSE Regulation''), a wholly-owned subsidiary of NYSE, consolidated their member firm regulation operations into a combined organization, FINRA.[8] As part of the transaction, FINRA incorporated into its existing rulebook, comprised of NASD rules, certain NYSE rules related to member firm conduct (''Incorporated NYSE Rules''). Consequently, the current FINRA rulebook consists of two sets of rules: (1) NASD rules; and (2) the Incorporated NYSE Rules (together referred to as the ''Transitional Rulebook''). Following the consolidation of NASD and NYSE Regulation into FINRA, FINRA established a process to develop the Consolidated FINRA Rulebook. During this process, FINRA members generally will be subject to both the Consolidated FINRA Rulebook, as it becomes populated with rules filed with and approved by the Commission, and the Transitional Rulebook. As the Consolidated FINRA Rulebook expands with Commission-approved FINRA rules, the Transitional Rulebook will be reduced by the elimination of those rules, or sections thereof, that address the same subject matter. Therefore, when the Consolidated FINRA Rulebook is complete, the Transitional Rulebook will have been eliminated in its entirety. The proposed rule changes would incorporate various rules into the Consolidated FINRA Rulebook, eliminate certain Incorporated NYSE Rules, and apply the consolidated FINRA rules to the NYSE firms admitted pursuant to IM–1013–1 (''Waive-In Firms'').

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Marketplace and Procedural Rules Proposal, as amended, the Waive-In Firms Proposal, the General Standards Proposal, as amended, the Ethical Conduct and Fairness Opinion Rules Proposal, and the Miscellaneous Rules Proposal, as amended, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[9] In particular, the Commission finds that these proposed rule changes are consistent with Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. In addition, for purposes of the Marketplace and Procedural Rules Proposal, the Commission finds that this proposed rule change is consistent with Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates and controls.

The Commission notes that FINRA will announce the implementation date of the proposed rule changes in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The discussion below does not review every detail of each of the proposed rule changes, but focuses on the most significant rules and policy issues considered by the Commission in reviewing the proposals.

A. Marketplace and Procedural Rules Proposal (SR–FINRA–2008–021)

The Marketplace and Procedural Rules Proposal will transfer from the Transitional Rulebook to the Consolidated FINRA Rulebook the NASD Rule 4000 through 14000 Series, with the exception of the Rule 11000 Series (Uniform Practice Code). The proposed rule change generally will transfer these rules into the Consolidated FINRA Rulebook in their entirety with certain non-material changes, including: Replacing references to NASD or the Association with FINRA; renumbering and relocating certain rules, or sections thereof, to effectuate a new organizational framework; and making certain other non-substantive and conforming changes. Additionally, the Marketplace and Procedural Rules Proposal will reserve Rule Series 0100 through 5000 for future transfers and amendments to member conduct rules relating to requirements such as the member application processes and associated person registration, transactions with customers, supervision, communications and disclosures, and financial responsibility. Further, with the exception of the arbitration and meditation procedures, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials (''IMs''). The IMs will become stand-alone rules or will be integrated into existing rule text or moved to a ''Supplementary Material'' section at the end of a rule. The ''Supplementary Material'' will set forth the same type of legally binding guidance and additional information that IMs provide presently and will be filed with the Commission.

The Marketplace and Procedural Rules Proposal also provides that certain rules in the Transitional Rulebook have general application to the entirety of rules that govern FINRA members. These rules, described in greater detail in the Marketplace and Procedural Rules Proposal, will apply to both the Transitional Rulebook and the Consolidated Rulebook.

The Commission believes that the Marketplace and Procedural Rules Proposal is consistent with Section 15A(b)(6) of the Act and would further the objective of the NASD/NYSE Regulation consolidation to create a more efficient regulatory system for firms that are members of both FINRA and NYSE. The Commission believes that the proposed rule change is designed to clarify, harmonize and streamline the Rule 4000 through 14000 Series (not including the 11000 Series) for adoption as FINRA rules in the new Consolidated FINRA Rulebook. The Commission also believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act by providing for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

B. Waive-In Firms Proposal (SR–FINRA–2008–022)

As part of the consolidation process, NYSE required that its members also be

[7] *See* Securities Exchange Act Release No. 58244 (July 29, 2008), 73 FR 45258 (August 4, 2008) (SR–FINRA–2008–029).

[8] *See* Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR–NASD–2007–023).

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(5).

registered FINRA members. Accordingly, FINRA adopted IM–1013–1, which provided an expedited waive-in process for NYSE member organizations to become FINRA members.[12] IM–1013–1 requires these Waive-In Firms to be subject to the Incorporated NYSE Rules, FINRA's By-Laws, the Schedules to the By-Laws, including Schedule A (Assessments and Fees), and the NASD Rule 8000 (Investigations and Sanctions) and Rule 9000 (Code of Procedure) Series, provided that their securities business is limited to permitted floor activities.[13] FINRA proposed to amend IM–1013–1 to add that the Waive-In Firms also will be subject to the consolidated FINRA rules and to remove references to the NASD Rule 8000 and Rule 9000 Series, whose content is being transferred without substantive change to the Consolidated FINRA Rulebook.[14] The amended IM–1013–1 will continue to require that the Waive-In Firms be subject to the Incorporated NYSE Rules until they are eliminated from the Transitional Rulebook and replaced by rules adopted into the FINRA Consolidated Rulebook.

The Commission notes that the proposed rule change would ensure that Waive-In Firms will continue to be subject to FINRA's investigation and disciplinary procedure rules as those rules will be incorporated into the Consolidated FINRA Rulebook. The Commission further notes that the proposed rule change, by subjecting the Waive-In Firms to all the consolidated FINRA rules, also would ensure that Waive-In Firms will continue to be subject to FINRA's regulation throughout the consolidation process, as the Incorporated NYSE Rules are eliminated and replaced by rules adopted into the FINRA Consolidated Rulebook. Thus, the Commission believes that the proposed rule change should minimize the potential for regulatory and jurisdictional gaps during the period that the rule consolidation process occurs. Therefore, because the Waive-In Firms will continue to be subject to FINRA's regulation, the Commission believes that the proposed rule change is consistent with the requirements of the Act, in particular, Section 15A(b)(6),[15] which requires the rules of a national securities association to be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest.

C. General Standards Proposal (SR–FINRA–2008–026)

The General Standards proposal will adopt the NASD Rule 0100 Series (General Provisions) as FINRA rules in the Consolidated FINRA Rulebook, with the exception of NASD Rule 0120, which FINRA advises will be addressed at a later date in a separate filing. The NASD Rule 0100 Series governs the adoption, application and interpretation of NASD rules and sets forth certain definitions not contained in the FINRA By-Laws. In addition, these rules address FINRA's delegation of certain responsibilities to its subsidiaries, and its authority and access with respect to its subsidiaries. FINRA is proposing to transfer this rule series as the FINRA Rule 0100 Series, to be renamed as ''General Standards,'' to the Consolidated FINRA Rulebook, with only minor, non-substantive changes. The proposed rule change will not impose any new requirements on FINRA members, but will clarify and streamline these rules for inclusion in the Consolidated FINRA Rulebook. FINRA notes that, notwithstanding their transfer to the Consolidated FINRA Rulebook, these rules of general applicability will apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.[16]

The Commission believes that the General Standards Proposal is consistent with the Act and is appropriate in light of the objective to create a Consolidated FINRA Rulebook. The Commission believes that the proposed rule change is designed to clarify and streamline the Rule 0100 Series for adoption as FINRA rules in the new Consolidated FINRA Rulebook.

D. Ethical Conduct and Fairness Opinion Rules Proposal (SR–FINRA–2008–028)

FINRA proposed to adopt NASD Rules 2110, 2120, and 2290 as FINRA Rules 2010, 2020, and 5150, respectively, in the Consolidated FINRA Rulebook. The rules, which include the general standards of commercial honor and principles of trade, anti-fraud and manipulation requirements, and disclosure of conflicts of interest in fairness opinions, will be adopted without change, with the exception of re-numbering the rules to reflect the new organizational structure of the Consolidated FINRA Rulebook. As noted above, this proposal does not address the Interpretive Materials (''IMs'') to NASD Rule 2110, which FINRA advises will be considered in a later phase of the rulebook consolidation process. Consequently, the IMs will remain in the Transitional Rulebook. In the process of transferring NASD Rule 2110, which requires adherence to just and equitable principles of trade, FINRA proposed to delete Incorporated NYSE Rule 401(a) and its two accompanying Interpretations because they are subsumed under the general principles of NASD Rule 2110. In addition, FINRA proposed to delete paragraphs (1), (3) and (4) of Incorporated NYSE Rule 435, because they are subsumed under the anti-fraud and manipulation requirements of NASD Rule 2120.[17]

The transfer of NASD Rules 2110 and 2020 to the Consolidated FINRA Rulebook, in addition to the deletion of Incorporated NYSE Rule 401(a), its corresponding Interpretations, and certain provisions of Incorporated NYSE Rule 435, will continue to require FINRA members to adhere to the requirements of the overarching principles of just and equitable trade and the prohibitions against fraudulent and manipulative acts and practices. The Commission believes that the proposed rule change is consistent with the requirements of Section 15A of the Act, and with Section 15A(b)(6) in particular, because the rules to be transferred to the Consolidated FINRA Rulebook are designed to allow FINRA to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.[18] The Commission also believes that it is reasonable for FINRA to transfer to the Consolidated FINRA Rulebook the provisions of NASD Rule 2290, which requires the disclosure of conflicts of interest in connection with fairness opinions and procedures designed to mitigate those conflicts.

E. Miscellaneous Rules Proposal (SR–FINRA–2008–029)

FINRA proposed a rule change to repeal various NASD and Incorporated NYSE Rules to eliminate duplicative provisions and remove requirements

[12] *See* Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (SR–NASD–2007–056).

[13] If a Waive-In Firm wished to expand its business beyond the permitted floor activities indicated in IM–1013–1, it must apply for such business expansion pursuant to NASD Rule 1017 and, upon approval, become subject to all NASD rules in addition to the consolidated FINRA rules and the Incorporated NYSE Rules.

[14] *See* Release No. 34–58176, *supra* note 3.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] *See* Release No. 34–58176, *supra* note 3.

[17] FINRA also proposed to delete as obsolete paragraphs (6) and (7) of Incorporated NYSE Rule 435, but retained paragraph (5) of this rule.

[18] 15 U.S.C. 78*o*–3.

that are specific to the NYSE marketplace. NASD Rule 1130 (Reliance on Current Membership List) is to be deleted as it is duplicative of Article IV, Section 4 of the FINRA By-Laws. Also, Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs—Disclosure and Monitoring) will be repealed because it is subsumed under NASD Rule 2110's *Notice to Members* 03–68. Further, Incorporated NYSE Rules 440F (Public Short Sale Transactions Effected on the Exchange) and 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) will be eliminated because they are specific to the NYSE marketplace and relate solely to exchange transactions. Finally, Incorporated NYSE Rule 477 (Retention of Jurisdiction—Failure to Cooperate) will be repealed because it retains jurisdiction over former members and associated person for initiating disciplinary action, which is also specified under Article IV, Section 6 and Article V, Section 4 of the FINRA By-Laws.

The Commission notes that the deletion of these rules will eliminate duplicative provisions covered by other rules in the Consolidated FINRA Rulebook and remove unnecessary requirements that are specific to the NYSE marketplace. In eliminating duplicative and unnecessary rules, the proposed rule change should further the objectives of Section 15A(b)(6) of the Act,[19] which requires that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the Marketplace and Procedural Rules Proposal (SR–FINRA–2008–021), as modified by Amendment No. 1; the Waive-In Firms Proposal (SR–FINRA–2008–022); the General Standards Proposal (SR–FINRA–2008–026), as modified by Amendment No. 1; the Ethical Conduct and Fairness Opinion Rules Proposal (SR–FINRA–2008–028); and the Miscellaneous Rules Proposal (SR–FINRA–2008–029), as modified by Amendment No. 1, be, and hereby are, approved.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23040 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58648; File No. SR–FINRA–2008–044]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Supervision of Market Letters

September 25, 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 September 4, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rules 2210 (Communications with the Public) and 2211 (Institutional Sales Material and Correspondence) and Incorporated New York Stock Exchange (''NYSE'') Rule 472 (Communications with the Public) to address the supervision of market letters.[4] Among other things, the proposed rule change would amend the definition of ''sales literature'' in NASD Rule 2210 to exclude market letters that qualify as ''correspondence'' and would define ''correspondence'' in NASD Rule 2211 to include market letters distributed by a member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

NASD Rules

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) Definitions. For purposes of this Rule and any interpretation thereof, ''communications with the public'' consist of:

(1) No Change.

(2) ''Sales Literature.'' Any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, [market letters,] performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member's products or services.

(3) through (6) No Change.

(b) through (e) No Change.

* * * * *

2211. Institutional Sales Material and Correspondence

(a) Definitions

For purposes of Rule 2210, this Rule, and any interpretation thereof:

(1) ''Correspondence'' consists of any written letter or electronic mail message *and any market letter* distributed by a member to:

(A) one or more of its existing retail customers; and

(B) fewer than 25 prospective retail customers within any 30 calendar-day period.

(2) through (4) No Change.

(5) ''Market Letter'' means any written communication excepted from the definition of ''research report'' pursuant to Rule 2711(a)(9)(A).

(b) through (e) No Change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Items include non-substantive edits discussed during a September 24, 2008 telephone call between Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA; Haimera Workie, Branch Chief, Office of Chief Counsel, Division of Trading and Markets, SEC; and Timothy Cornell, Attorney, Office of Chief Counsel, Division of Trading and Markets, SEC.

[4] The FINRA rulebook currently includes (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to members of both FINRA and the NYSE, referred to as Dual Members.

Incorporated NYSE Rules

Rule 472. Communications with the Public

(a) Approval of Communications and Research Reports

(1) Each advertisement, [market letter,] sales literature or other similar type of communication which is generally distributed or made available by a member organization to customers or the public must be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) No Change.

(b) through (m) No Change.

* * * Supplementary Material: * * *

.10 Definitions

(1) through (3) No Change.

(4) Market letter[s]. ''Market letter[s]'' [are]*is* defined as[, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles that are not defined as research reports. They may also include ''follow-ups'' to research reports and articles prepared by member organizations which appear in newspapers and periodicals.] *any written communication excepted from the definition of ''research report'' pursuant to Rule 472.10(2)(a).*

(5) No Change.

.20 through .140 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 2210 (Communications with the Public) requires a registered principal of a member to approve prior to use any item of sales literature. The term ''sales literature'' does not include any item distributed or made available only to institutional investors.[5]

''Sales literature'' includes ''market letters.'' Incorporated NYSE Rule 472 similarly requires a qualified person to approve in advance of distribution any market letter, but contains no exception for market letters sent only to institutional investors. FINRA is concerned that the pre-approval requirements may, in some circumstances, inhibit the flow of information to traders and other investors who base their investment decisions on timely market analysis.

To address this concern, the proposed rule change would amend the definition of ''sales literature'' in NASD Rule 2210 to exclude market letters that qualify as a ''correspondence'' and further would amend ''correspondence'' in NASD Rule 2211 to include market letters (as well as any written letter or electronic mail message) distributed by a member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period. Pursuant to NASD Rule 2211(b)(1)(A), correspondence does not require approval by a registered principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes a financial or investment recommendation or otherwise promotes a product or service of the member. The proposed rule change also would amend Incorporated NYSE Rule 472 to eliminate the requirement that a qualified person approve market letters in advance of distribution.

Thus, under the proposed rule change, all FINRA members would be permitted under FINRA rules to distribute market letters to institutional investors (as defined in NASD Rule 2211(a)(3)) without requiring prior approval by a registered principal or qualified person. In addition, under the proposed rules, a member also could distribute without prior approval by a registered principal a market letter that is sent only to existing retail customers and fewer than 25 prospective retail customers within a 30 calendar-day period. However, if the market letter both (1) is sent to 25 or more existing retail customers *and* (2) makes a financial or investment recommendation or otherwise promotes a product or service of the member, prior principal approval would be required. In addition, similar to the manner in which other forms of correspondence (i.e., written letters and electronic mail messages) are addressed by NASD Rules 2210 and 2211, if a market letter were sent to 25 or more prospective retail customers within a 30-calendar day period, the market letter would fall within the definition of sales literature and have to be supervised as such, including approval by a registered principal prior to use.

As correspondence, market letters would remain subject to the supervision and review requirements of NASD Rule 3010, which requires each firm to establish written procedures that are appropriate to its business, size, structure and customers for the review of outgoing correspondence. If these procedures do not require review of all correspondence prior to use or distribution, they must provide for the education and training of associated persons as to the firm's procedures governing correspondence, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to.[6]

The proposed changes would allow firms to distribute most market letters in a timely manner without requiring a registered principal to review each market letter prior to distribution, but would maintain investor protection by requiring firms to review such correspondence in accordance with mandated supervisory policies and procedures.

The proposal also would create a new definition of the term ''market letter'' in NASD Rule 2211—and modify the existing definition in Incorporated NYSE Rule 472—to mean any communication specifically excepted from the definition of ''research report'' under NASD Rule 2711(a)(9)(A) and Incorporated NYSE Rule 472.10(2)(a), respectively. This exception consists of:

- Discussions of broad-based indices;
- Commentaries on economic, political or market conditions;

[5] Pursuant to NASD Rule 2211(a)(2), communications of any kind sent only to institutional investors (as defined in NASD Rule 2211(a)(3)) are considered to be ''institutional sales material.'' NASD Rule 2210 does not require approval of institutional sales material by a registered principal prior to use. However, institutional sales material remains subject to the supervision and review requirements of NASD Rule 2211(b)(1)(B).

[6] *See also* Incorporated NYSE Rule 342. FINRA has proposed to amend the current requirements governing the supervision and review of correspondence. *See Regulatory Notice* 08–24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls). That proposal, if adopted, would reorganize the supervision rules and codify existing guidance with respect to the supervision and review of correspondence. Thus, FINRA does not anticipate any significant changes to the supervision standards on which the proposed rule change is predicated.

• Technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

• Statistical summaries of multiple companies' financial data, including listings of current ratings;

• Recommendations regarding increasing or decreasing holdings in particular industries or sectors; and

• Notices of ratings or price target changes (subject to certain disclosure requirements).

FINRA proposes to define market letters by reference to an exception from the definition of ''research report'' under NASD Rule 2711 and Incorporated NYSE Rule 472 to make clear that a firm may not supervise as correspondence communications that fall within the definition of ''research report.'' The proposed rule change would, however, increase a firm's flexibility in supervising market letter communications that do not qualify as research reports.

FINRA would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The implementation date would be the date FINRA publishes the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed amendment would allow firms to distribute market letters in a timely and expedient manner, while still requiring firms to review and supervise these communications to ensure that they are fair, balanced and not misleading.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[7] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2008–044 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–044. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–044 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23047 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58635; File No. SR–ISE–2008–68]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes.

September 24, 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 September 16, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 8 Premium Products.[3] The text of the proposed rule change is available at the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Product [sic] is defined in the Schedule of Fees as the products enumerated therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the PowerShares DB Commodity Index Tracking Fund (''DBC''),[4] the PowerShares DB Base Metals Fund (''DBB''),[5] the Vanguard® Total Stock Market ETF (''VTI''),[6] the PowerShares DB U.S. Dollar Bullish Fund (''UUP''),[7] the iShares Lehman TIPS Bond Fund (''TIP''),[8] the iShares MSCI Pacific Ex-Japan Index Fund (''EPP''),[9] the Ultra Real Estate ProShares (''URE'') and the UltraShort MSCI EAFE ProShares (''EFU'').[10] The Exchange represents that DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU are eligible for options trading because they constitute ''Exchange-Traded Fund Share,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU.[11] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[12] and Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker

[4] The PowerShares DB Commodity Index Tracking Fund (''DBC'') is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Excess Return ™. DBC is managed by DB Commodity Services LLC. DBLCI ™ and Deutsche Bank Liquid Commodity Index ™ are trademarks of Deutsche Bank AG, London (''DB AG''). PowerShares® is a registered service mark of PowerShares Capital Management LLC (''PowerShares''). DBC is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBC. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBC or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBC or with making disclosures concerning options on DBC under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[5] The PowerShares DB Base Metals Fund (''DBB'') is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Industrial Metals Excess Return ™. DBB is managed by DB Commodity Services LLC. DBLCI ™ and Deutsche Bank Liquid Commodity Index ™ are trademarks of Deutsche Bank AG, London (''DB AG''). PowerShares® is a registered service mark of PowerShares Capital Management LLC (''PowerShares''). DBB is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBB. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBB or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBB or with making disclosures concerning options on DBB under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[6] Vanguard, Vanguard ETFs and Vanguard ETF are trademarks of The Vanguard Group, Inc. (''Vanguard''). All other marks are the exclusive property of their respective owners. The Vanguard® Total Stock Market ETF (''VTI'') tracks the Morgan Stanley Capital International® (MSCI®) U.S. Broad Market Index. MSCI does not sponsor, endorse, or promote VTI and makes no representation regarding the advisability of investing in VTI. Vanguard has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on VTI or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on VTI or with making disclosures concerning options on VTI under any applicable federal or state laws, rules or regulations. Vanguard does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

[7] The PowerShares DB U.S. Dollar Bullish Fund (''UUP'') is based on the Deutsche Bank Long U.S. Dollar Index (USDX®) Futures Index ™ (''DB Long USD Futures Index''). The sponsor of the DB Long USD Futures Index is Deutsche Bank AG, London (''DB AG''). UUP is managed by DB Commodity Services LLC. U.S. Dollar Index® and USDX® are registered service marks of IntercontinentalExchange, Inc. PowerShares® is a registered service mark of PowerShares Capital Management LLC (''PowerShares''). UUP is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in UUP. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UUP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UUP or with making disclosures concerning options on UUP under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a majority owned subsidiary of Barclays Bank PLC. ''Lehman Brothers U.S. Treasury TIPS Index'' is a trademark of Lehman Brothers and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares Lehman TIPS Bond Fund (''TIP'') is not sponsored, endorsed, issued, sold or promoted by Lehman. BGI and Lehman have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on TIP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on TIP or with making disclosures concerning options on TIP under any applicable federal or state laws, rules or regulations. BGI and Lehman do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[9] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a majority owned subsidiary of Barclays Bank PLC. ''MSCI Pacific Ex-Japan Index'' is a service mark of Morgan Stanley Capital International (''MSCI'') and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares MSCI Pacific Ex-Japan Index Fund (''EPP'') is not sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EPP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EPP or with making disclosures concerning options on EPP under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[10] ''Dow Jones'' and ''Dow Jones U.S. Real Estate SM'' are service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by ProShares. MSCI, Morgan Stanley Capital International and EAFE are service marks of MSCI and have been licensed for use for certain purposes by ProShares. All other trademarks and service marks are the property of their respective owners. The Ultra Real Estate ProShares (''URE'') and the UltraShort MSCI EAFE ProShares (''EFU'') are not sponsored, endorsed, issued, sold or promoted by Dow Jones or MSCI. Dow Jones and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on URE and EFU or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on URE and EFU or with making disclosures concerning options on URE and EFU under any applicable federal or state laws, rules or regulations. Dow Jones and MSCI do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[11] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52)

[12] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

transactions in equity options.[13] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[14] Further, since options on DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(4),[16] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[17] and Rule 19b–4(f)(2)[18] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[13] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[14] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 per contract.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–68 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22967 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

[19] 17CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58613; File No. SR–Phlx–2008–65]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Administration and Enforcement of Certain Rules Pertaining to XLE

September 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 5, 2008, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to change the administration and enforcement of certain rules in light of the fact that the Exchange will cease operation of the technology used to operate XLE®,[5] the Exchange's equity trading system, on or before October 24, 2008 (the ''Shutdown''). At this time, the Exchange is not proposing to amend the text of any rules, but simply to change the administration and enforcement of certain rules, as described below. The Shutdown will not affect any other trading systems or markets at Phlx.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43) (Order approving XLE®).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the administration and enforcement of certain rules in light of the Shutdown. A more in-depth rule review may occur in the future; this proposal is intended to cover the specific rules that make trading available on XLE, which will no longer be the case after the Shutdown.

Background

The Exchange began XLE® in 2006. The Exchange has continued to operate XLE® through the July 2008 acquisition [6] of the Exchange by the NASDAQ OMX Group, Inc. (''NASDAQ'') and up to the present time. Following a review of the operations of the Exchange, including XLE® and the fact that it currently accounts for less than one-tenth of one percent of national share volume in equity securities, it was determined to cease operation of the technology used to operate XLE®.

The Shutdown

The Exchange informed XLE Participants [7] on August 4, 2008, that the Exchange intends to discontinue XLE® on or before October 24, 2008.[8] As XLE Participants discontinue their operations on XLE® and disconnect from the system, they will not be permitted to re-connect. Depending on the rate of disconnections, the Exchange may determine to implement the Shutdown before October 24, 2008. In that event, the Exchange would notify any remaining XLE Participants at least 14 calendar days prior to the Shutdown.

Current XLE Rules

Today, XLE® is available for the acceptance of orders from XLE Participants and the execution of those orders.[9] On the day of the Shutdown and thereafter, XLE® would no longer be available to accept orders and would not be available to execute any transactions. Any executions that took place before the Shutdown would clear and settle normally, even if such settlement was scheduled to take place after the Shutdown.

Further, the Exchange's optional outbound router, facilitated through PRO Securities LLC (''PRO''),[10] will cease to accept and route orders on the day of the Shutdown because PRO will no longer receive any instructions to route orders to other trading centers from XLE®.PRO was deemed to be a facility [11] of the Exchange because of its function as the provider of these outbound router services. Following the Shutdown, PRO would no longer act in its capacity as an outbound router for the Exchange; therefore, the Exchange would no longer administer PRO as its facility.

Finally, the Exchange currently allows member organization that are XLE Participants and the members associated with them to register as Market Makers [12] and Market Maker Authorized Trader (''MMATs''),[13] respectively.[14] After the Shutdown, the Exchange will cancel the registrations of any Market Makers and MMATs that remain on XLE® [15] and such persons will cease to have the obligations associated with Market Makers and MMATs [16] because after the Shutdown, there will be no venue for the Market Makers and MMATs to perform their functions. In addition, after the Shutdown, no further registrations for Market Makers or MMATs will be accepted because there will be no venue for Market Makers and MMATs to perform their functions.

To the extent that these rules state that orders ''will'' be accepted and registrations will be permitted, for example, that will not occur after the Shutdown. The trading rules applicable to XLE will continue to be in effect respecting trades that occurred before the Shutdown and remain in the Exchange's rulebook for ease of reference.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing notice of the Exchange's policy regarding the administration and enforcement of certain Phlx Rules in light of the Shutdown.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange designates the proposed rule change as constituting a stated policy, practice, or interpretation with respect, to the meaning, administration, or enforcement of an existing rule. Specifically, as described above, the Exchange has stated its policy regarding how it will administer

[6] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008).

[7] *See* Phlx Rule 1(nn).

[8] At that time, XLE Participants were given information about applying for membership in the NASDAQ Stock Market as a means to continue their equity trading operations, if they so desired. XLE Participants are free to apply for membership at any trading venue. Nothing in this proposed rule change is intended to restrict their access at any other venue.

[9] *See* Phlx Rules 181 and 185.

[10] *See* Phlx Rule 185(g). The function of PRO as the Exchange's optional outbound routing facility is more fully described in Section IV.D. of the SR–Phlx–2006–43 approval order. *See supra* note 5.

[11] 15 U.S.C. 78c(a)(2).

[12] *See* Phlx Rule 1(l).

[13] *See* Phlx Rule 1(m).

[14] *See* Phlx Rule 170(a), 171(b) and 172(a).

[15] At this time, only one Market Maker, that has one MMAT, is registered in three securities on XLE®.

[16] *See* Phlx Rules 171 and 173.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

and enforce the enumerated portions of Phlx Rules 170–174, 181 and 185 regarding XLE®, Market Makers, MMATs and PRO in light of the Shutdown.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–65. 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, 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–Phlx–2008–65 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22960 Filed 9–30–08; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58629; File No. SR–NYSE–2008–85]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rule 1000 (''Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation'')

September 24, 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 September 17, 2008, New York Stock Exchange LLC ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1000(a)(iv)(C) to modify the current LRP value ranges. The text of the proposed rule change is available at NYSE, *http://www.nyse.com*, 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1000(a)(iv)(C) (Liquidity Replenishment Point) to widen the value ranges for the calculation of liquidity replenishment points (''LRPs'').

Background

Pursuant to NYSE Rule 1000(a)(iv), LRPs are pre-determined price points that function to moderate volatility, improve price continuity, and foster market quality in a particular security by temporarily converting the electronic market to an auction market and permitting new orders, the Crowd, or the specialist, to add liquidity.[3]

Pursuant to NYSE Rule 60, Autoquote is suspended when an LRP is reached and resumes in no more than five to ten seconds after the LRP is reached.[4] Autoquote resumes unless there is interest on the NYSE Display Book® system[5] that would lock or cross the market. In such case, Autoquote will resume with a manual transaction.[6]

LRPs are calculated by adding and subtracting a value to the security's last sale price. The LRP values are based on an examination of trading data and vary based on the security's NYSE average daily volume (''ADV''), price, and volatility. The values used to calculate the LRP's range do not change intraday

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See also* NYSE Rules 60(e)(i). It is important to note that not all securities on the NYSE are eligible for automatic executions. In accordance with Exchange Rule 1000(a)(vi) those securities that are priced at or more than $1000 per share are defined as ''high-priced'' and do not receive automatic executions and, therefore, are not assigned an LRP value ranges.

[4] *See* NYSE Rule 60(e)(ii)(C). Currently, in an effort to increase the availability of NYSE quotes eligible for automatic execution, the NYSE will revert to auto-quoting in situations where the LRP has been hit but the market is not locked or crossed in five seconds. See Liquidity Replenishment Points (LRPs) Timer Pilot (August 20, 2008), NYSE Trader Updates available at: *http://traderupdates.nyse.com/2008/08/liquidity_replenishment_points_2.html* .

[5] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[6] *See* NYSE Rule 60(e)(ii)(C).

and are disseminated daily by the Exchange on its Web site.

Modification to LRP Value Ranges

The Exchange proposes to amend NYSE Rule 1000(a)(iv)(C) to double the current LRP ranges in order to limit the number of times that an LRP is reached and the total number of times during the trading day that automatic execution is suspended as a result of an LRP being triggered. In this way the Exchange will allow for more continuous automatic executions of securities. While the purpose of the LRP is to dampen volatility and to provide market participants with time to react, the Exchange believes that the proposed amendment is necessary to lessen artificial limitations on trading and will ultimately provide beneficial trading opportunities for its customers. As a means of controlling volatility, LRPs are intended to be triggered infrequently, *i.e.*, when the market is experiencing a large price movement (based on a security's typical trading characteristics or other market conditions) over short periods of time during the trading day. If an LRP is triggered too frequently trading in the security is overly restrained and does not meet the competitive needs of NYSE customers. As such the NYSE believes that doubling the current LRP value ranges will better facilitate the natural trading pattern of a particular security.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) [7] of the Act, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [8] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange's proposal to double the current LRP ranges is consistent with these objectives in that it is intended to limit the number of times that an LRP is reached and the total number of times during the trading day that automatic execution is suspended as a result of an LRP being triggered.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is designed to benefit market participants and customers by providing for more continuous automatic executions of securities traded on the Exchange.[13] Specifically, the proposed rule change seeks to maintain LRPs as a mechanism to moderate volatility, but proposes to adjust the current LRP ranges in order to limit the number of times during the trading day that automatic execution is suspended as a result of an LRP being triggered. Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of 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–NYSE–2008–85 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–NYSE–2008–85. 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

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSE–2008–85 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22964 Filed 9–30–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58631; File No. SR–NYSE–2008–84]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Proposing To Suspend the Operation of Certain NYSE Rules To Respond to the Impact to the Marketplace of the Events of September 15, 2008, Including the Bankruptcy Filing by Lehman Brothers Holding Inc.

September 24, 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 September 15, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') is proposing to suspend the operation of certain NYSE rules to respond to the impact to the marketplace of the events of September 15, 2008, including the bankruptcy filing by Lehman Brothers Holding Inc. (LEH) and the proposed acquisition of Merrill Lynch by Bank of America.

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 included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

On Monday, September 15, 2008, the markets experienced almost unprecedented turmoil that impacted some of the most significant players on Wall Street: Lehman Brothers Holding Inc. (LEH) (''Lehman'') filed for bankruptcy protection in the United States District Court for the Southern District of New York under Chapter 11 of the U.S. bankruptcy code; Bank of America agreed to acquire Merrill Lynch in an all-stock transaction; and American Insurance Group, Inc. (''AIG'') announced a significant restructuring.

In response to these events, the Exchange undertook a number of steps to ensure continuity of the marketplace. First, the Exchange invoked NYSE Rule 48, which authorizes the Exchange to suspend certain rules relating to the opening of trading at the Exchange. Second, because the pre-opening market in LEH suggested that the stock would open below $1.05, at 9 a.m. on September 15, 2008, the Exchange announced a Rule 123D(3) ''Sub-penny trading'' condition for LEH and halted trading in LEH at the Exchange. Third, to ensure a fair and orderly market in all securities listed at the Exchange, the Exchange announced that, pursuant to NYSE Rule 103.11, NYSE-listed securities for which Lehman Brothers Market Makers, a division of Lehman Brothers Inc. (''Lehman Brothers''), had been the specialist, would be temporarily reallocated to Spear, Leeds & Kellogg Specialists LLC (''Spear Leeds''). Notwithstanding the reallocation, these stocks will continue to trade using Lehman Brothers technology and staff until a more permanent allocation can be effected.

To ensure a fair and orderly market during this period of market stress, the Exchange is seeking temporary relief from certain NYSE rules that are implicated by the Lehman Brothers situation. In particular, the Exchange is proposing to suspend the operation of NYSE Rule 123D(3) on September 15, 2008 for derivative securities of LEH that trade at the Exchange (''LEH Preferreds'')[4] that would open at a price of $1.05 or less. This proposed suspension relates only to the opening of LEH Preferreds on September 15, 2008. Immediately following the opening of such securities, the Exchange intends to halt trading of LEH Preferreds pursuant to NYSE Rule 123D(3) and invoke a Sub-penny trading condition.

In addition, pending the installation of telephone lines at Lehman Brothers' specialist posts that are connected to Spear Leeds, the Exchange proposes to temporarily suspend NYSE Rule 36.30 so that Spear Leeds may conduct permitted communications from those post locations via non-Exchange portable telephones.

a. NYSE Rule 123D(3)

(1) Background

NYSE Rule 123D(3) provides that if a security would open on the Exchange at a price of $1.05 or less, trading on the Exchange shall be immediately halted because of a ''Sub-penny trading'' condition. The Exchange adopted Rule 123D(3) in part to be compliant with Regulation NMS.

Regulation NMS, adopted by the Securities and Exchange Commission (''SEC'') in April 2005,[5] provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611[6] is required to have a Regulation NMS-compliant trading system fully operational by

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Lehman Bros Pfd C (LEH–PC); Lehman Bros 5.67 D (LEH–PD); Lehman Bros Dep SH F (LEH–PF); Lehman Dep Pfd G (LEH–PG); Lehman Pfd J (LEH–PJ); Lehman CP III 6.375 K (LEH–PK); Lehman Br Cap Tr IV (LEH–PL); Lehman Bro Cap V 6.0 (LEH–PM); and Lehman Br Hld 6.24 N (LEH–PN).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR Parts 200, 201, 230, 240, 242, 249 and 270.

[6] *See* 17 CFR 242.611.

March 5, 2007 (the ''Trading Phase Date'').[7]

For stocks priced below $1.00 per share, Regulation NMS Rule 612[8] permits markets to accept bids, offers, orders and indications of interest in increments smaller than $0.01, but not less than $0.0001, and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of $0.01 for all securities trading below $100,000. *See* NYSE Rule 62.

The SEC's interpretation of Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution, to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade. Failure to do so constitutes a violation of Rule 611's Order Protection Rule. However, pursuant to Rule 611(b)(3) of Regulation NMS,[9] transactions that constitute a single-priced opening, reopening, or closing transaction by a trading center are excepted from the Order Protection Rule. Accordingly, a sub-penny execution at the opening that trades through another market center does not constitute a violation of Regulation NMS Rule 611's Order Protection Rule.

The Exchange adopted Rule 123D(3) to provide for a ''Sub-penny trading'' condition because the Exchange's trading systems did not then accommodate sub-penny executions on orders routed to better-priced protected quotations, nor could it recognize a quote disseminated by another market center if such quote had a sub-penny component and, therefore, could have inadvertently traded through better protected quotations. The rule allows the Exchange to halt trading in a security whose price was about to fall below $1.00, without delisting the security, so that the security could continue to trade on other markets that deal in bids, offers, orders or indications of interest in sub-penny prices, until the price of the security had recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules.[10]

A subsequent amendment established that any orders received by the NYSE in a security subject to a ''Sub-penny trading'' condition would be routed to NYSE Arca, Inc. (''NYSE Arca'') and handled in accordance with the rules governing that market.[11] When a ''Sub-penny trading'' condition is invoked, all open limit orders in such security at the Exchange will be cancelled and will not be routed to NYSE Arca.

(2) Proposed Suspension of Rule 123D(3) for LEH Preferreds

Pre-opening quoting and trading in away markets relating to LEH Preferreds indicated that such securities would open at prices below $1.05.[12] Prior to the opening, the Exchange received pre-opening orders in LEH Preferreds. If the Exchange were to invoke a ''Sub-penny trading'' condition for those securities prior to the opening, such orders would be cancelled and would not be routed to NYSE Arca. Therefore, such orders would not be executed, potentially harming the investing public that routed such orders to the Exchange before the Exchange's announcement of a sub-penny trading halt.

The Exchange notes that while such an opening transaction would be a violation of NYSE Rule 123D(3), an execution at a sub-penny price at the opening at the Exchange would not be a violation of Regulation NMS. Accordingly, because a sub-penny execution at the opening would not constitute a violation of the Regulation NMS Rule 611 Order Protection Rule, the Exchange believes that the harm to the investing public in not having their orders in LEH Preferreds executed at the opening outweighs any harm that may result from a violation of NYSE Rule 123D(3). The Exchange therefore proposes a one-day suspension of the operation of NYSE Rule 123D(3) that would be in effect only for the opening transactions of LEH Preferreds on September 15, 2008.

Once trading in LEH Preferreds open at the Exchange, should such opening prices be at or below $1.05, the Exchange would, in compliance with NYSE Rule 123D(3), immediately halt trading and invoke a ''Sub-penny trading'' condition for such securities.

b. Proposed Suspension of NYSE Rule 36.30

NYSE Rule 36 bars members or member organizations from establishing or maintaining any telephonic or electronic location between the Floor of the Exchange and any other location without the approval of the Exchange. NYSE Rule 36.30 permits a specialist unit to maintain telephone lines at its stock trading post locations that connect to off-Floor offices of the specialist unit or the unit's clearing firm. Specialists, however, are not permitted to use cell phones from the Floor of the Exchange.

As permitted by NYSE Rule 36.30, the Lehman Brothers specialist posts (posts 10 and 11), which are located in the Main Room of the Floor of the Exchange, have telephone lines connected to its off-Floor offices. Those post locations do not have telephone lines connected to any other entities. Because the temporary reallocation to Spear Leeds of the securities registered with Lehman as specialist was done shortly before the opening of trading at the Exchange, the Exchange was unable to install telephone lines at posts 10 and 11 that connect to Spear Leeds in time for the opening of trading or otherwise reorganize so that the Lehman Brothers and Spear Leeds posts are located in contiguous space.

Without telephone lines from the posts 10 and 11 to Spear Leeds' off-Floor location, Spear Leeds is limited in its ability to engage in permitted telephonic communications from posts 10 and 11. Accordingly, the Exchange proposes to temporarily suspend NYSE Rule 36.30 as it applies only to Spear Leeds at posts 10 and 11. Such suspension would end the earlier of (i) the installation of telephone wires at posts 10 and 11 that connect to Spear Leeds' off-Floor locations; or (ii) the end of the temporary reallocation of the securities assigned to Lehman Brothers to Spear Leeds.

In connection with this temporary relief, the Exchange will advise Spear Leeds' management and risk personnel that use of the mobile telephones is limited to permitted communications, and may not be used from the Lehman Brothers' posts for any other purposes.

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,[13] in that it is designed to prevent fraudulent and manipulative

[7] *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (S7–10–04).

[8] *See* 17 CFR 242.612. Rule 612 originally was to become effective on August 29, 2005, but the date was later extended to January 29, 2006. *See* Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

[9] *See* 17 CFR 242.611(b)(3).

[10] *See* Securities and Exchange Commission Release No. 34–55398; File No. SR–NYSE–2007–25 (Mar. 5, 2007).

[11] *See* Securities and Exchange Commission Release No. 34–55537; File No. SR–NYSE–2007–30 (Mar. 27, 2007).

[12] Prior to the open on September 15, 2008, the Exchange announced that it was invoking a Rule 123D(3) ''Sub-penny trading'' condition for LEH and that any trading in that security would take place at NYSE Arca. Trading in LEH had begun at NYSE Arca at 4 a.m. EST on September 15, 2008.

[13] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In view of the immediate nature of the relief requested, the Exchange seeks to have the proposed amendments become operative immediately. The Exchange requests that the Commission waive the 30-day delayed operative date, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) thereunder. Waiver of these periods will allow the Exchange to immediately implement the proposed rule change.

As outlined more fully above, the Exchange believes that the proposed relief is limited in nature, and that the benefits of the proposed relief outweigh the potential harms. In particular, the proposed suspension of NYSE Rule 123D(3) would be applicable only to the opening transactions on September 15, 2008 for nine Lehman Preferred securities. Similarly, the proposed temporary suspension of NYSE Rule 36.30 is only applicable for posts 10 and 11 on the Floor of the Exchange to respond to the emergency reallocation of Lehman Brothers securities to Spear Leeds, and the suspension would end the earlier of (i) the installation of telephone wires at posts 10 and 11 that connect to Spear Leeds' off-Floor locations; or (ii) the end of the temporary reallocation of the securities assigned to Lehman Brothers to Spear Leeds.[18] Moreover, given the rapidity of recent developments, the NYSE believes that immediate effectiveness is required in order to avoid significant disruption to the market. The NYSE believes that this need satisfies the standards set out in the Exchange Act and related rules regarding immediate effectiveness filings.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.[19]

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 No. SR–NYSE–2008–84 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–NYSE–2008–84. 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 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–2008–84 and should be submitted on or before October 22, 2008.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[17] *Id.*

[18] Subsequent to filing this proposed rule change, the Exchange informed the Commission that installation of telephone wires at posts 10 and 11 connecting to Spear Leeds's off-Floor locations was completed the afternoon of September 15, 2008. Thus, the suspension would end and Rule 36.30 would be in effect again prior to the opening of trading on September 16, 2008. Telephone conversation between Clare Saperstein, Director, Office of the General Counsel, Exchange, and Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, September 15, 2008.

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22966 Filed 9–30–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58638; File No. SR–NASDAQ–2008–076]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq's PORTAL Market

September 24, 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 September 19, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC (''Nasdaq'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to: (1) Cease operation, as a self-regulatory organization, of Nasdaq's electronic platform for the quoting and trading of restricted equity securities designated for inclusion in The PORTAL® Market (''PORTAL'' or the ''PORTAL Market''); and (2) file, pursuant to Nasdaq Rule 2140, for Nasdaq to (a) acquire a minority ownership interest in a Delaware limited liability company to be known as The PORTAL Alliance LLC (the ''Alliance'') that would, in turn, own and operate an open electronic platform for the posting of indicative quotations and negotiation of transactions in equity securities designated as PORTAL securities and (b) enter into an agreement to operate the platform on behalf of the Alliance. Other members of the Alliance would include certain Nasdaq members or their affiliates. The text of the proposed amendment to the Nasdaq PORTAL Rules is below. Proposed new language is underlined, proposed deletions are in brackets.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

6501 Definitions

For purposes of the PORTAL® Rules, unless the context requires otherwise:

(a)–(e) No Change.

(f) The term ''PORTAL security'' or ''PORTAL securities'' shall mean a security that is currently designated [and authorized for inclusion in the] *as a* PORTAL *security* [Market] by Nasdaq pursuant to the Rule 6500 Series.

(g) The term ''PORTAL Market'' or ''System'' shall mean the system for the quotation, negotiation, execution and automated trade reporting of PORTAL *Debt*[s] Securities that is owned and operated by The NASDAQ Stock Market LLC.

(h)–(x) No Change.

* * * * *

6504 Reporting Transactions in PORTAL Securities

Transactions in PORTAL *Debt*[s] Securities shall be reported by the System in accordance with applicable self-regulatory organization rules.

* * * * *

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 31, 2007, the SEC approved amendments to the PORTAL Rules that reestablished a trading system for the purpose of quoting and trading securities eligible for resale by qualified institutional buyers under SEC Rule 144A.[5] This approval represented a new phase in the operation of the Nasdaq PORTAL Market, which was originally approved by the SEC in 1990 simultaneously with the SEC's approval of Rule 144A.[6]

During the period following the reestablishment of the Nasdaq PORTAL Market, Nasdaq has reexamined the operational and ownership structure of PORTAL with a view to adopting changes that reflect the preferences of market participants and enhance the operation of the system, which, in turn, Nasdaq believes will achieve the goals of enhanced transparency and efficiency in the trading of restricted securities that are at the heart of Nasdaq's PORTAL initiatives.

As a result, Nasdaq is proposing to: (1) Terminate the current Nasdaq PORTAL Market for equity securities, while continuing to review and designate both restricted debt and equity securities as PORTAL-eligible securities in its SRO capacity; and (2) Enter into agreements with certain of its members or their affiliates (the ''Firms'') to create, and take a minority interest in, the Alliance, a Delaware limited

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://wallstreet.cch.com/nasdaq.*

[5] Securities Exchange Act Release No. 56172 (July 31, 2007), 72 FR 44196 (SR–NASDAQ–2006–065). At the time of approval, Nasdaq indicated that it would first operate a system for trading PORTAL equity, and thereafter would enable the system to trade PORTAL debt securities. While the PORTAL equity functionality has been available since August 15, 2007, Nasdaq has yet to implement trading functionality for PORTAL debt securities. Subsequently, on February 21, 2008, the SEC approved amendments to the qualification requirements for equity securities to be designated for inclusion in PORTAL in cases where the security does not receive book-entry settlement services at The Depository Trust Corporation (''DTC'') as had previously been required by PORTAL Rule 6502(b)(1)(C), but is nonetheless subject to an alternative regular-way non-DTC settlement procedure. Securities Exchange Act Release No. 57368 (February 21, 2008), 73 FR 10852 (SR–NASDAQ–2008–011).

[6] Rule 144A was adopted by the SEC in 1990 in Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (S7–23–88). PORTAL was approved by the SEC in Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (SR–NASD–88–23). For an explanation of the history of the development of the PORTAL Market, *see* Securities Exchange Act Release No. 55669 (April 25, 2007), 72 FR 23874 (SR–NASDAQ–2006–065).

liability company principally formed to operate a private open-access over-the-counter platform to facilitate transactions in, and, through expected links with third-party transfer tracking systems, monitor ownership of and compliance with transfer restrictions applicable to PORTAL eligible equity and certain other securities eligible for resale under Rule 144A, initially to be known as The PORTAL Alliance Platform (the ''Alliance Platform'').[7] Under the proposed structure, Nasdaq will cease to operate the Nasdaq PORTAL Market for equity securities in its capacity as a self-regulatory organization and instead operate the Alliance Platform in a private vendor capacity pursuant to corporate and commercial agreements among and between Nasdaq and the Alliance.[8] Nasdaq has also agreed to phase out use of trademarks using the term PORTAL over the course of two years to prevent any confusion between the new Alliance Platform and the terminated Nasdaq PORTAL Market for equity securities. In return for its financial and intellectual property contributions, Nasdaq will receive a 10% ownership interest in the Alliance in addition to a non-voting preferred interest.[9] Under the terms of its agreement with the Alliance to operate the Alliance Platform, Nasdaq will be reimbursed for the costs of operating and maintaining the Alliance Platform. The business operations and decisions of the Alliance Platform will ultimately be the responsibility of the Alliance's Board of Managers. Beyond its capacity as but one of what is expected to be initially 12 minority holders with a voting board seat and acting at the direction of the Alliance as operator of the Alliance Platform, Nasdaq will not direct, control, or otherwise manage the business of the Alliance. In addition, Nasdaq commits not to provide pricing or other concessions related to its exchange facilities to Nasdaq members based on their usage of the Alliance Platform.

Access to the Alliance Platform will be open to any qualified registered broker-dealer or institution, and will be entirely voluntary. Thus, any qualified party, including broker-dealers that are not parties to the Alliance limited liability company agreement, may enter indicative quotations, negotiate trades through and receive transaction information from the Alliance Platform. Operationally, the Alliance Platform expects to have the current Nasdaq PORTAL Market quoting and trading functionality as it relates to PORTAL equity securities link with existing transfer tracking systems that monitor and enforce caps on recordholder numbers and other transfer restrictions for equity securities. The Alliance Platform will forward required trade reports for transactions in PORTAL securities negotiated on or otherwise reported to the Alliance Platform to the Financial Industry Regulatory Authority (''FINRA'') for regulatory purposes, as well as forward settlement-related transaction information to the relevant recipient(s) for settlement purposes.[10]

Nasdaq believes the above structure will encourage the posting of indicative quotation information in equity securities eligible for resale under Rule 144A(i) within a framework that makes such information generally available to qualified market participants and (ii) through a system that allows the qualified market participants to take action based on such information. In Nasdaq's view, this result is far superior to the current situation where Nasdaq's sole ownership of a 144A trading system as a facility of the exchange has resulted in no material improvement in the transparency and efficiency in the trading of 144A equity. This proposal creates an opportunity for a more transparent and technologically efficient trading and trade reporting environment for 144A equity to develop.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(5) of the Act,[12] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that the proposal will encourage more competitive, efficient and transparent trading in restricted securities. By providing an operational and ownership structure that encourages an increased display of trading interest, Nasdaq expects the proposal to benefit all market participants that seek to invest in, or trade, such securities.

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, as amended.

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) does not 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[13] and Rule 19b–4(f)(6) thereunder.[14]

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

[7] The Nasdaq member firms expected to enter into agreements with Nasdaq either directly or through affiliated or successor entities are: Banc of America Securities LLC; Citigroup Global Markets Inc.; Credit Suisse Securities (USA) LLC; Deutsche Bank Securities Inc.; Goldman, Sachs & Co.; J.P. Morgan Securities Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; UBS Securities LLC; and Wachovia Capital Markets, LLC.

[8] Nasdaq has provided copies of these agreements to Commission Staff.

[9] Nasdaq's financial contribution to the Alliance will be an amount equal to that received by Nasdaq for designating PORTAL equity securities.

[10] Currently, DTC allows Rule 144A securities that are not investment grade rated debt to be eligible for deposit, book-entry delivery, and other depository services only if the Rule 144A securities are designated for inclusion in a system of a self-regulatory organization (''SRO'') approved by the Commission ''for the reporting of quotation and trade information of Rule 144A transactions ('SRO Rule 144A System').'' *See* Securities Exchange Act Release No. 33327 (Dec. 13, 1993); 58 FR 67878. We note in this regard that the Alliance Platform will not be a system of a SRO approved by the Commission ''for the reporting of quotation and trade information of Rule 144A transactions'' within the meaning of this rule.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Nasdaq satisfied the five-day pre-filing notice requirement.

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, as amended, 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–2008–076 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–2008–076. 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 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 offices of Nasdaq. 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–2008–076 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22968 Filed 9–30–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.625 (4 5/8) percent for the October—December quarter of FY 2009.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. E8–23110 Filed 9–30–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6381]

Culturally Significant Objects Imported for Exhibition Determinations: ''Beadwork Storytellers, A Visual Language''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Beadwork Storytellers, A Visual Language,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Cherokee Heritage Center, Tahlequah, OK, from on or about October 11, 2008, until on or about April 19, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 24, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–23147 Filed 9–30–08; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at September 11, 2008, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on September 11, 2008, in Lewisburg, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved certain water resources projects; (2) approved enforcement actions for six projects; and (3) granted a request for extension of an emergency certificate issued on July 24, 2008. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: September 11, 2008.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net*; or Stephanie L. Richardson, Secretary to

[15] 17 CFR 200.30–3(a)(12).

the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A special presentation on Bucknell University's Susquehanna River Initiative by Dr. Benjamin Hayes; (2) a special presentation on Environmental Flows by Mark Breyer of the Nature Conservancy; (3) a report on the present hydrologic conditions of the basin; (4) approval of a health insurance trust fund; (5) approval/ratification of various grants and contracts; (6) a directive for staff to move forward on a proposed rulemaking action regarding consumptive use by gas well development projects; (7) establishment of a ''Compliance Reserve Fund'' to hold the proceeds of settlements and civil penalty assessments; (8) deferral of action on an errata sheet for the public hearing transcript of March 13, 2008, to the December 4, 2008 meeting; and (9) appointment of Stephanie L. Richardson as the new Secretary to the Commission. The Commission also heard a Legal Counsel's report and an update on recent activities in the regulatory program.

The Commission also convened a public hearing and took the following actions:

Public Hearing—Projects Approved

1. *Project Sponsor and Facility:* East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Application for surface water withdrawal of up to 0.036 mgd.

2. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Application for consumptive water use of up to 2.075 mgd from various surface water sources and the following public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc.—Susquehanna Division, Canton Borough Authority, Borough of Troy, and Village of Horseheads, N.Y.

3. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Town of Owego, Tioga County, N.Y. Application for surface water withdrawal of up to 0.999 mgd.

4. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (for operations in Susquehanna and Wyoming Counties, Pa.). Application for consumptive water use of up to 3.039 mgd from various surface water sources and the following public water suppliers: Tunkhannock Borough Municipal Authority, Pennsylvania American Water Company—Montrose System, and Meshoppen Borough Council.

5. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Borough, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

6. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

7. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Oakland Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

8. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Susquehanna River), Susquehanna Depot Borough, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

9. *Project Sponsor and Facility:* Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.250 mgd.

10. *Project Sponsor and Facility:* East Resources, Inc. (Crooked Creek), Middlebury Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.036 mgd.

11. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (for operations in Bradford County, Pa.). Application for consumptive use of water of up to 5.000 mgd.

12. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

13. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Unnamed Tributary to Meshoppen Creek), Dimock Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

14. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Tunkhannock Creek), Lennox Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

15. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Meshoppen Creek-2), Lemon Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

16. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Meshoppen Creek-1), Lemon Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

17. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (operations in Potter and McKean Counties, Pa.). Application for consumptive water use of up to 4.900 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority, Williamsport Municipal Water Authority, and Borough of Montoursville.

18. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (East Fork Sinnemahoning Creek—Horton), East Fork Township, Potter County, Pa. Application for surface water withdrawal of up to 0.008 mgd.

19. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

20. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (First Fork Sinnemahoning Creek), Sylvania Township, Potter County, Pa. Application for surface water withdrawal of up to 0.107 mgd.

21. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (East Fork Sinnemahoning Creek—East Fork), East Fork Township, Potter County, Pa. Application for surface water withdrawal of up to 0.025 mgd.

22. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (East Fork Sinnemahoning Creek), Wharton Township, Potter County, Pa. Application for surface water withdrawal of up to 0.027 mgd.

23. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Susquehanna River), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

24. *Project Sponsor and Facility:* Pennsylvania General Energy Company, LLC (First Fork Sinnemahoning Creek), Wharton Township, Potter County, Pa. Application for surface water withdrawal of up to 0.231 mgd.

25. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation (Bowmans Creek), Eaton Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

26. *Project Sponsor and Facility:* Neptune Industries, Inc. (Lackawanna River), Borough of Archbald,

Lackawanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

27. *Project Sponsor and Facility:* PEI Power Corporation, Borough of Archbald, Lackawanna County, Pa. Modification to consumptive water use and surface water withdrawal approval (Docket No. 20010406) for addition of up to 0.530 mgd from a public water supplier as a secondary supply source, and settlement of an outstanding compliance matter.

28. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (for operations in Bradford, Centre, Clinton, Lycoming, Sullivan, and Tioga Counties, Pa.). Application for consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority—Pine Creek and Anthony Facilities, Williamsport Municipal Water Authority, City of Lock Haven Water Department, Borough of Bellefonte, Borough of Montoursville, Milesburg Water System, and Towanda Municipal Authority.

29. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.200 mgd.

30. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (Lycoming Creek), Lycoming Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.200 mgd.

31. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (for operations in Lycoming County, Pa.) Application for consumptive water use of up to 5.000 mgd from various surface water sources and the following public water suppliers: Jersey Shore Joint Water Authority—Pine Creek and Anthony Facilities, Williamsport Municipal Water Authority, Borough of Montoursville, and Towanda Municipal Authority.

32. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Muncy Creek), Penn Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

33. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Larrys Creek), Mifflin Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

34. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Muncy Creek), Picture Rocks Borough, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

35. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Loyalsock Creek), Montoursville Borough, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

36. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (West Branch Susquehanna River), Colebrook Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.200 mgd.

37. *Project Sponsor and Facility:* Rex Energy Corporation (for operations in Centre and Clearfield Counties, Pa.). Application for consumptive water use of up to 5.000 mgd from various surface water sources and the following public water supplier: Clearfield Municipal Authority.

38. *Project Sponsor and Facility:* Rex Energy Corporation (West Branch Susquehanna River), Goshen Township, Clearfield County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

39. *Project Sponsor and Facility:* Range Resources—Appalachia, LLC (Beech Creek), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.200 mgd.

40. *Project Sponsor and Facility:* Rex Energy Corporation (Moshannon Creek—Route 53), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

41. *Project Sponsor and Facility:* Rex Energy Corporation (Moshannon Creek Outfall), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

42. *Project Sponsor and Facility:* Rex Energy Corporation (Moshannon Creek—Peale), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

43. *Project Sponsor:* Suez Energy North America, Inc. Project Facility: Viking Energy of Northumberland, Point Township, Northumberland County, Pa. Modification to consumptive water use approval (Docket No. 19870301).

44. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Tyrone Quarry, Warriors Mark Township, Huntingdon County, and Snyder Township, Blair County, Pa. Modification to consumptive water use and groundwater withdrawal approval (Docket No. 20031205) for groundwater withdrawals of 0.095 mgd from Well 1, 0.006 mgd from Well 2, and 0.050 mgd from Well 3, and 0.003 mgd from Well 5.

45. *Project Sponsor and Facility:* Papetti's Hygrade Egg Products, Inc., d.b.a. Michael Foods Egg Products Co., Upper Mahantango Township, Schuylkill County, Pa. Modification of consumptive water use approval (Docket No. 19990903) and a new groundwater withdrawal of 0.450 mgd from Well 3.

46. *Project Sponsor:* Old Castle Materials, Inc. Project Facility: Pennsy Supply, Inc.—Hummelstown Quarry, South Hanover Township, Dauphin County, Pa. Application for surface water withdrawal of up to 29.952 mgd.

47. *Project Sponsor and Facility:* Dart Container Corporation of Pennsylvania, Upper Leacock Township, Lancaster County, Pa. Modification of groundwater approval (Docket No. 20040910).

48. *Project Sponsor:* East Berlin Area Joint Authority. Project Facility: Buttercup Farms, Hamilton Township, Adams County, Pa. Applications for groundwater withdrawals (30-day averages) of 0.144 mgd from Well TW–1, 0.029 mgd from Well TW–2, and a total system withdrawal limit of 0.173 mgd.

Public Hearing—Projects Tabled

1. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.053 mgd.

2. *Project Sponsor and Facility:* Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.250 mgd.

3. *Project Sponsor and Facility:* Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.250 mgd.

4. *Project Sponsor and Facility:* Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

5. *Project Sponsor and Facility:* Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

6. *Project Sponsor and Facility:* Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

Public Hearing—Project Withdrawn

Project Sponsor and Facility: Cabot Oil & Gas Corporation (Martins Creek), Lathrop Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.980 mgd.

Public Hearing—No Action

Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for amendment to existing FERC license (FERC Project No. 1881) and for redevelopment of the project with modification of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

Public Hearing—Enforcement Actions

The Commission accepted settlement offers for the following projects:

1. *Project Sponsor and Facility:* Cabot Oil & Gas Corporation; Teel, Greenwood, Ely, Lewis and Black Wells; Dimock and Springfield Townships, Susquehanna County, Pa.
2. *Project Sponsor and Facility:* Chief Oil & Gas, LLC; Kensinger, Spotts, and Poor Shot Wells; Mifflin, Penn and Anthony Townships, Lycoming County, Pa.
3. *Project Sponsor and Facility:* EOG Resources, Inc.; Houseknecht, Olsyn and Pierce Wells; Springfield Township, Bradford County, Pa.; PHC Well, Lawrence Township, Clearfield County, Pa.; Leasgang and Pichler Wells, Jay Township, Elk County, Pa.
4. *Project Sponsor and Facility:* North Coast Energy, Inc.; Litke Wells, Burnside Township, Centre County, Pa.
5. *Project Sponsor and Facility:* Range Resources—Appalachia LLC; McWilliams, Bobst Mountain, Ogontz, and Ulmer Wells; Cogan House, Cummings and Lycoming Townships, Lycoming County, Pa.; Gulf USA Well, Snow Shoe Township, Centre County, Pa.; Duffey Well, Ridgebury Township, Bradford County, Pa.
6. *Project Sponsor and Facility:* Turm Oil, Inc., LaRue Well, Rush Township, Susquehanna County, Pa.

Public Hearing—Extension of Emergency Certificate

The Commission granted an extension of an Emergency Certificate until December 4, 2008, to the following project:

CAN DO, Inc., Hazle Township, Luzerne County, Pa.—Request to extend the use of Site 14 Test Well to serve Humbolt Industrial Park.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: September 22, 2008.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E8–23079 Filed 9–30–08; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2008–0138]

Agency Information Collection Activities: Notice of Request for Renewal of Two Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 1, 2008.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2008–0138 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title 1: A Guide to Reporting Highway Statistics.

OMB Control Number: 2125–0032.

Abstract: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formula that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Average Burden Per Response: The estimated average reporting burden per response for the annual collection and processing of the data is 825 hours for each of the States (including local governments), the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42,900 hours.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Erickson, (202) 366–9235, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI–10), 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Title 2: Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125–0028.

Abstract: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles, and travel components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA.

Respondents: State governments of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: The estimated average burden

per response for the annual collection and processing of the HPMS data is 1,440 hours for each State, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 74,880 hours.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rozycki, (202) 366–5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, 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 these information collections.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued On: September 25, 2008.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E8–23111 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cambria County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued July 14, 2001) to prepare an Environmental Impact Statement for improvements to State Route 56 through West End of Johnstown, Pennsylvania. Studied improvements extended from the east of Minersville to north of Oakhurst through Johnstown, Tannerville Coopersdale, Morrelville, Cambria City, and Minersville.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA, 17101–1720, Telephone (717) 221–3411 or Vince Greenland, P.E., Assistant District Executive, Pennsylvania Department of Transportation, District 9–0, 1620 North Juniata Street, Hollidaysburg, PA, Telephone (814) 696–7151.

SUPPLEMENTARY INFORMATION: The need to address safety, geometric deficiencies, deficient operational characteristics including poor access and traffic flow with heavy truck volumes have, in part, been addressed or will be addressed through separate Categorical Exclusion projects. On-line safety and upgrade improvements within the same corridor will be evaluated in a Master Plan with sufficient public outreach.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

David C. Lawton,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. E8–23123 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Mississippi Division; Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement (EIS): Hinds and Madison Counties, MS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent published on August 10, 2007 to prepare an Environmental Impact Statement (EIS) for a proposed Interstate type facility connecting I–55 with I–20 through Hinds and Madison counties is being rescinded.

FOR FURTHER INFORMATION CONTACT: Cecil Vick, Environment and Planning Management Team Leader, Federal Highway Administration, Mississippi Division, 666 North Street, Suite 105, Jackson, Mississippi 39202, Telephone: (601) 965–4217.

SUPPLEMENTARY INFORMATION:

Background

The FHWA is rescinding the notice of intent to prepare an Environmental Impact Statement (EIS) which was to study potential improvements to the existing State Route 22 (SR 22) corridor. This 40-mile long corridor was proposed to be upgraded to Interstate standards with logical termini on Interstate 55 in Madison County and I–20 in Hinds County, Mississippi.

The purpose of the EIS was to address the transportation, environmental, and safety issues of such a transportation corridor. The improved connection would improve mobility and access throughout the Jackson metropolitan area and support economic activity. The highway was proposed as a full control of access facility, and appropriate interchanges will be studied at various locations.

During the first round of public meetings, it was determined that the public was unanimous in their opposition to this project. In addition, there is no funding available for the construction.

Andrew H. Hughes,

Division Administrator, Mississippi, Federal Highway Administration, Jackson, Mississippi.

[FR Doc. E8–23124 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jackson County, NC

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project from NC 107 to U.S. 23–74 east of Sylva, Jackson County, NC. (TIP Project R–4745.)

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, P.E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, *Telephone:* (919) 747–7014.

SUPPLEMENTARY INFORMATION: The FHWA and the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the proposed NC 107 Connector from NC 107 to U.S. 23–74 east of Sylva. The purpose of this project is to relieve traffic congestion in the Sylva area. The proposed action is consistent with the Sylva Thoroughfare Plan adopted in 1994 and the Jackson County Comprehensive Transportation Plan that is anticipated for adoption in 2009. The following alternatives will be studied: (1) The ''no-build'' alternative, (2) improve existing facilities and (3) a new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Opportunities will be provided for involvement with the public in defining the project purpose and need and determining the range of alternatives to be considered for the project. Citizens' informational workshops and meetings with local officials will be held in the study area. Upon completion of the draft EIS, a public hearing will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing. Information on the time and place of the workshops and hearings will be provided in the local news media.

An interagency project team is being assembled to obtain input on major milestones during the project's development. These include the purpose and need, detailed study alternatives, bridge lengths, alignment reviews, the preferred alternative, and avoidance and minimization of environmental impacts.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 25, 2008.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. E8–23087 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0091]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FELIX.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD–2008–0091 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 31, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0091. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FELIX is:

Intended Use: ''Day charter passenger operations, possible overnight charter.''

Geographic Region: ''Eastern Seaboard and their inland tributaries including the following states: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Washington, DC, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 25, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–23108 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. MARAD–2008 0092]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE WEALTH GROUP.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD–2008–0092 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 31, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0092. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE WEALTH GROUP is:

Intended Use: ''Local Day Charter.''

Geographic Region: ''Southern California.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 25, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–23109 Filed 9–30–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions (CDFI) Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the FY 2009 funding round of the Native American CDFI Assistance (NACA) Program.

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020

DATES: Application deadlines for the FY 2009 funding round of the NACA Program (hereafter, the FY 2009 Funding Round) are as follows: (i) If you wish to apply for Financial Assistance (FA) and/or Technical Assistance (TA) funding, your funding application must be received by midnight, Eastern Time (ET), Friday, December 19, 2008; and (ii) if you wish to apply for CDFI certification, your certification application must be received by midnight, ET, Monday, November 3, 2008.

TABLE 1—FY 2009 NACA PROGRAM DEADLINES

[All midnight, ET deadlines]

Application type	Application deadline	Last date to contact fund staff
Native CDFI Certification Application	Monday, November 3, 2008	Wednesday, October 29, 2008.
NACA Program Funding Application	Friday, December 19, 2008	Wednesday, December 17, 2008.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2009 funding round of the NACA Program.

I. Funding Opportunity Description

A. Through the NACA Program, the CDFI Fund provides: (i) FA awards to CDFIs that have at least 50 percent of their activities directed toward serving Native American, Alaskan Native and/or Native Hawaiian Communities (Native CDFIs) that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) TA grants to Native CDFIs, entities proposing to become Native CDFIs, and to Native organizations, Tribes and Tribal organizations that propose to create Native CDFIs (Sponsoring Entities), in order to build the Native CDFIs' capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified Native CDFIs.

B. The regulations governing the CDFI Program are found at 12 CFR Part 1805 (the Regulations) and provide guidance on evaluation criteria and other requirements of the NACA Program. The Fund encourages Applicants to review

the Regulations. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Regulations, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability

1. *FY 2009 Funding Round:* Through this NOFA, and subject to funding availability, the Fund expects that it may award approximately $8 million in appropriated funds. The Fund reserves the right to award in excess of $8 million in appropriated funds to Applicants in the FY 2009 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *Availability of Funds for the FY 2009 Funding Round of the NACA Program:* Funds for the FY 2009 Funding Round have not yet been appropriated. If funds are not appropriated for the FY 2009 Funding Round, there will not be a FY 2009 Funding Round. Further, it is possible that if funds are appropriated for the FY 2009 Funding Round, the amount of such funds may be greater than or less than the amounts set forth above. Further, if funds for the FY 2009 Funding Round are not appropriated, entities that are eligible to apply for CDFI Program funds and that might otherwise have applied for NACA Program funds, are encouraged to apply for CDFI Program funds through the FY 2009 Funding Round.

B. Types of Awards

An Applicant may submit an application either for: (i) A FA-only award; (ii) a FA award and a TA grant; or (iii) a TA-only grant.

1. *FA Awards:* FA is intended to provide flexible financial support to Native CDFIs so that they may achieve the strategies outlined in their Comprehensive Business Plans. FA awards can be used in the following four categories: (i) Financial Products, (ii) Loan Loss Reserves, (iii) Capital Reserves, and/or (iv) Operations. For purposes of this NOFA, Financial Products means loans, grants, equity investments and similar financing activities, including the purchase of loans originated by certified Native CDFIs and the provision of loan guarantees, in the Applicant's Target Market, or for related purposes that the Fund deems appropriate. Loan Loss Reserves means funds that the Applicant will set aside in the form of cash, or through accounting-based accrual, reserves to cover losses on loans, accounts and notes receivable made in its Target Market, or for related purposes that the Fund deems appropriate. Capital Reserves means funds that the Applicant will set aside in the form of reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or serving the financing needs of its Target Market, or for related purposes that the Fund deems appropriate. Operations means: funds that the Applicant will use to undertake Development Services, Financial Services, and/or for related purposes that the Fund deems appropriate. FA awards are most commonly used for an Applicant's Financial Products since FA funds can be used to support the Applicant's community development lending activities.

The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award to a NACA Program Applicant on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:*

(a) The Fund provides TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its application and the applicable budget chart.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new eligible market, and tools that allow the Applicant to assess the impact of its activities in its community.

(c) Eligible TA grant uses include, but are not limited to: (i) Procuring professional services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity and related MIS; (iii) acquiring training for staff, management and/or board members; and (iv) paying recurring expenses, including staff salary and other key operating expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a Native CDFI or to create a Native CDFI.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Regulations specify the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *FA Applicant Categories:* All Applicants for FA awards through this NOFA must meet the criteria below:

TABLE 2—FA APPLICANT CRITERIA

FA applicant category	Applicant criteria	Applicant may apply for:	Application deadline
Native CDFI	A Certified/Certifiable Native CDFI that meets all other eligibility requirements described in this NOFA.	Up to and including $500,000 in FA funds, and up to $150,000 in TA funds.	Midnight, ET, Friday, December 19, 2008.

Please note: (1) The Fund reserves the right, in its sole discretion, to award amounts in excess of or less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate. (2) The term ''Native Initiatives Funding Programs'' refers to the Native American CDFI Assistance (NACA) Program and all prior funding programs, through which funds are no longer available, including the Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development (NACD) Program, and the Native American Technical Assistance (NATA) Component of the CDFI Program.

2. *TA Applicants:* All Applicants for TA grants through this NOFA must meet the following criteria:

TABLE 3—TA APPLICANT CRITERIA

Applicant type	Criteria of applicant	Applicant can apply for:	Application due date
TA-Only	A Certified Native CDFI, a Certifiable Native CDFI, an Emerging Native CDFI, or a Sponsoring Entity.	Up to $150,000 for capacity-building activities.	TA–only: Midnight, ET, Friday, December 19, 2008.
FA/TA	A Certified Native CDFI, or a Certifiable Native CDFI.	Up to $150,000 in TA for capacity-building activities.	FA/TA: Midnight, ET, Friday, December 19, 2008.

The Fund, in its sole discretion, reserves the right to award amounts less than the anticipated maximum award amounts permitted in this NOFA, if the Fund deems it appropriate.

3. *Native CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified Native CDFIs and Certifiable Native CDFIs; eligible TA Applicants include Certified Native CDFIs, Certifiable Native CDFIs, Emerging Native CDFIs, and Sponsoring Entities defined as follows:

(a) *Certified Native CDFIs:* A Certified Native CDFI whose certification has not expired and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than the Certification Application deadline stated in Table 1 of this NOFA, or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov*. Please note: The Fund provided some Native CDFIs with written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those Native CDFIs meet this eligibility requirement.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity from which the Fund receives a complete CDFI Certification Application no later than the Certification Application deadline stated in Table 1 of this NOFA, or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a Native CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form.

Please note: *FA Applicants that are Certifiable Native CDFIs:* While your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a Native CDFI. If the Fund is unable to certify your organization as a Native CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that demonstrates to the Fund's satisfaction that it has a reasonable plan to be certified as a Native CDFI by December 31, 2012 or such other date selected by the Fund. Emerging Native CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging Native CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a Native CDFI by a certain date.

(d) *Sponsoring Entities:* For the purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become a certified Native CDFI. For purposes of this NOFA, Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; (b) an organization whose primary mission is to serve a Native Community including, but not limited to an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or education organization, or Chamber of Commerce, and that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community. Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to create a legal entity by a certain date that will, in turn, seek Native CDFI certification and to transfer available award funds to that Native CDFI upon certification.

4. *Limitation on Awards:* An Applicant may receive only one award through the NACA Program in the FY 2009 Funding Round. No Applicant may receive a BEA Program award if it has a NACA Program and a BEA Program application pending in the

same funding round (subject to certain limitations; refer to the Regulations at 12 CFR 1805.102). A NACA Program Applicant, its Subsidiaries or Affiliates also may apply for and receive a tax credit allocation through the NMTC Program, but only to the extent that the activities approved for NACA Program awards are different from those activities for which the Applicant receives a NMTC Program allocation.

5. *Contacting the Fund.* The Fund will respond to questions and provide support concerning CDFI certification related to the FY 2009 Funding Round between the hours of 9 a.m. and 5 p.m. ET, through the date that is three business days before the certification application deadline. The CDFI Certification Application and other information regarding CDFI certification may be obtained from the Fund's Web site at *http://www.cdfifund.gov*.

B. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. For purposes of this section, the Fund will consider an Affiliate to be any entity that meets the definition of Affiliate in the Regulations. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap:* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period extends back three years from the date that the Fund signs a Notice of Award; for purposes of this NOFA, and for ease of administration, the Fund will consider any assistance documented with a Notice of Award dated between July 31, 2006 and July 31, 2009 (which is the anticipated date that the Fund will issue Notices of Award for the FY 2009 Funding Round).

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an Affiliate of the Applicant is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Applicant is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s). Such entities will be ineligible to apply for an award pursuant to this NOFA so long as the Applicant's, or its Affiliate's, prior award or allocation remains in default status or such other time period as specified by the Fund in writing.

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) Within the 12-month period prior to the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) Within the 12-month period prior to the applicable application deadline, the Fund has made a final determination that an Affiliate of the Applicant is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA.

6. *Undisbursed award funds:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if an Affiliate of the Applicant is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOFA are included ('includable BEA awards'). Thus, for purposes of this NOFA, undisbursed BEA Program award funds are the amount of FY 2004, 2005 and 2006 awards that remain undisbursed as of the application deadline of this NOFA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives Funding Programs, only awards made to the Applicant (and any Affiliates) two to five calendar years prior to the end of the calendar year of this NOFA are

included ('includable CDFI/NI awards'). Thus, for purposes of this NOFA, undisbursed CDFI Program and NI awards are the amount of FY 2004, 2005, 2006 and 2007 awards that remain undisbursed as of the application deadline of this NOFA.

To calculate total includable BEA/CDFI/NI awards: Amounts that are undisbursed as of the application deadline of this NOFA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation on the Fund's Web site, found in the Q&A document for the FY 2009 Funding Round.

The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the New Markets Tax Credit (NMTC) Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated in writing by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the application deadline of this NOFA. An Applicant that is unsure about the disbursement status of any prior award should contact the Fund's Financial Manager via email at *CDFI.disburseinquiries@cdfi.treas.gov* for more information, no less than thirty (30) calendar days prior to the funding application deadline of this NOFA. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

7. *Contact the Fund.* Applicants that are prior Fund Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Disbursement questions should be directed to Grants Management via e-mail to *grantsmanagement@cdfi.treas.gov*. Reporting and compliance questions should be directed to Compliance, Monitoring and Evaluation (CME) at (202) 622–6330 or by email to *cme@cdfi.treas.gov*. Telephone calls to Grants Management and Financial Management should be directed to (202) 622–8226; facsimiles to (202) 622–7754; and mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through the date that is two business days before the applicable funding application deadline. The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on said date, until after the funding application deadline.

C. Matching Funds

1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the NACA Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the NACA Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of NACA Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Regulations at 12 CFR 1805.500 *et seq.* and matching funds guidance materials on the Fund's Web site for further information.

2. *Matching Funds Requirements per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline of this NOFA. Specifically, FA Applicants must meet the following matching funds requirements: An Applicant for a FA award must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2007 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2010 (with required documentation of such receipt received by the Fund not later than March 31, 2010), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2010.

3. *Matching Funds Terms Defined; Required Documentation.* (a) ''*Matching funds in-hand*'' means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, deposit, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement for all grants of $50,000 or more. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the

matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions.* Please note that the Regulations allow an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The Fund will assess the likelihood of this increase during the application review process. An award will not be made to any Applicant that has not demonstrated that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2007 and December 31, 2008, as demonstrated by the corresponding NCUA report.

IV. Application and Submission Information

A. Form of Application Submission

Applicants may submit applications under this NOFA only electronically, through Grants.gov. Applications sent by mail, facsimile or other form will not be accepted, except in circumstances that the Fund, in its sole discretion, deems acceptable.

B. Grants.gov

For the FY 2009 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act of 1999, the Fund is accepting applications submitted through the Grants.gov electronic system. The Fund has posted to its Web site at *http://www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. Applicants are encouraged to start the registration process now at *www.Grants.gov* as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

C. Application Content Requirements

Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An electronic application that does not include an EIN is incomplete and cannot be transmitted to the Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

D. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. An Applicant must be registered as both a User and an Organization in myCDFIFund as of the applicable application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts before the applicable application deadline. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. Application Deadlines

Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* Applications must be received in accordance with this NOFA by the following deadlines:

TABLE 4—FY 2009 CDFI PROGRAM DEADLINES

[All Midnight, ET deadlines]

Application type	Application deadline	Last date to contact fund staff
Native CDFI Certification Application	Monday, November 3, 2008	Wednesday, October 29, 2008.
NACA Program Funding Application	Friday, December 19, 2008	Wednesday, December 17, 2008.

All funding applications must be electronic and submitted through Grants.gov: No paper submittals or attachments will be accepted (please see the CDFI Certification Application for requirements specific to that application).

2. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected. The Fund will not grant exceptions or waivers. Any application that is deemed ineligible will not be returned to the Applicant.

F. Intergovernmental Review

Not applicable.

G. Funding Restrictions

For allowable uses of FA proceeds, please see the Regulations at 12 CFR 1805.301.

V. Application Review Information

A. Format

Funding applications must be single-spaced and use a 12-point font with 1-inch margins. Each section in the Application that is scored has page limitations. Applicants are encouraged to read each section carefully and to remain within the page limitations for each section. The Fund will not consider responses beyond the specified page limitation in each section. Also, the Fund will read only information requested in the Application and will not read attachments that have not been specifically requested in this NOFA or the Application, such as the Applicant's five-year strategic or marketing plans.

B. Criteria

The Fund will evaluate each application on a 100-point scale using numeric scores with respect to the five sections required in the Application. The Fund will score each section as follows:

TABLE 5—APPLICATION SCORING CRITERIA

Application sections	Scoring points
Market Analysis	25
Business Strategy	25
Community Development Performance & Effective Use	20
Management	20
Financial Health & Viability	10

C. Technical Assistance Proposal

Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the Comprehensive Business Plan, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs.

1. *Non-Certified Applicants:* An Applicant that is not a Certified Native CDFI and that requests TA to address certification requirements must explain how the requested TA grant will assist the Applicant in meeting the certification requirements. The Fund will assess the reasonableness of the plan to become certified (as specified above in Section III, Eligibility Requirements; A.3. CDFI Certification Requirements), taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity.

2. *Recurring Activities:* An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. The Fund will not provide funding for the same activities funded in prior awards.

D. Review and Selection Process

1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application does not meet eligibility requirements and will be rejected. Any application that does not meet eligibility requirements will not be returned to the Applicant.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Regulations, this NOFA and the application and guidance. As part of the review process, the Fund may contact the Applicant by telephone, email, mail, or through an on-site visit for the sole purpose of obtaining clarifying or confirming application information (such as statements of work, matching funds documentation, EINs, DUNS numbers, for example). After submitting its application, the Applicant will not be permitted to revise or modify its application in any way nor attempt to negotiate the terms of an award. If contacted for clarifying or confirming information, the Applicant must respond within the time parameters set by the Fund.

3. *Application Scoring; Ranking:*

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award.

(i) Evaluating Prior Award Performance: In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in Calendar Year 2008 in meeting its performance goals and measures, reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA; (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2005, FY 2006 or FY 2007 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the NACA Program. Furthermore, in the case of an Applicant that has previously received funding through any Fund program, the Fund will consider and may, in its discretion, deduct points for those Applicants that have in any proceeding instituted against the Applicant in, by or before any court, governmental or administrative body or agency received a final determination within the last three (3) years indicating that the Applicant has discriminated on the

basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve a FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that improvement in status is imminent and such improvement is expected to occur not later than September 30, 2009 or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by email using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. Notice of Award

The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant through its myCDFIFund account. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee or an Affiliate of the Awardee, is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund. For purposes of this section, the Fund will consider an Affiliate to mean any entity that meets the definition of Affiliate in the Regulations.

1. *Failure to meet reporting requirements:* If an Awardee, or an Affiliate of the Awardee is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in any previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if an Affiliate of the Awardee is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily

resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Affiliate of the Awardee is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement and the Fund has not specified in writing that the prior Awardee or allocatee is otherwise eligible to receive an Award under this NOFA, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) Within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Affiliate of the Awardee is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives a FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the application deadline, may not apply for a new award through the NOFA for another CDFI Fund program funding round after the date of said deobligation.

6. *Compliance with Federal Anti-Discrimination Laws:* If the Awardee has previously received funding through any Fund program, and if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund is made aware of a final determination, made within the last three (3) years, in any proceeding instituted against the Awardee in, by or before any court, governmental or administrative body or agency, declaring that the Awardee has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved eligible market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA-only, FA/TA, and TA-only Sponsoring Entity Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Reports (including an OMB A–133 audit, as applicable; however Financial Reports are not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA awards); (iv) Financial Status Report (for Awardees receiving TA grants); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving FA awards); (vi) Uses of Technical Assistance (for Awardees receiving TA grants); (vii) Explanation of Noncompliance (as applicable); and (viii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the

Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. All reports must be electronically submitted to the Fund via the Awardee's myCDFIFund account. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS. All other components of the Annual Report may be submitted electronically, as directed, by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

A. The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through the date that is two business days prior to the applicable application deadline. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the NACA Program.

B. The Fund's contact information is as follows:

TABLE 6—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
Fax number for all offices: 202–622–7754		
Information Technology/Technical Support	202–622–2455	*ithelpdesk@cdfi.treas.gov.*
CDFI Program/NI	202–622–6355	*cdfihelp@cdfi.treas.gov.*
CDFI Certification	202–622–6355	*cdfihelp@cdfi.treas.gov.*
Grants Management	202–622–8226	*grantsmanagement@cdfi.treas.gov.*
Compliance, Monitoring and Evaluation	202–622–6330	*cme@cdfi.treas.gov.*

C. *Information Technology Support:* People who have visual or mobility impairments that prevent them from creating a Target Market map using the Fund's Web site should call (202) 622–2455 for assistance (this is not a toll free number).

D. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov*. Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site is provided for illustrative purposes only and should not be relied on for purposes of this NOFA).

E. *Communication with the CDFI Fund:* The Fund will use the myCDFIFund Internet interface to correspond with Applicants and Awardees, using the contact information maintained in their respective myCDFIFund accounts. Therefore, the Applicant and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its myCDFIFund account(s). For more information about myCDFIFund (which includes information about the Fund's Community Investment Impact System), please see the Help documents posted at *http://www.cdfifund.gov/ciis/AccessingCIIS.pdf*.

VIII. Information Sessions and Outreach

The Fund may conduct webcasts or host information sessions for organizations that are considering applying to, or are interested in learning about, the Fund's programs. For further information, please visit the Fund's Web site at *http://www.cdfifund.gov*.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: September 24, 2008.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E8–23137 Filed 9–30–08; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report: Schedules SC, SO, VA, PD, LD, CC, CF, DI, SI, FV, FS, HC, CSS, CCR, and CMR

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on proposed changes to the Thrift Financial Report (TFR), Schedule SC—Consolidated Statement of Condition, Schedule SO—Consolidated Statement of Operations, Schedule VA—Consolidated Valuation Allowances and Related Data, Schedule PD—Consolidated Past Due and Nonaccrual, Schedule LD—Loan Data, Schedule CC—Consolidated Commitments and Contingencies, Schedule CF—Consolidated Cash Flow Information, Schedule DI—Consolidated Deposit Information, Schedule SI—Supplemental Information, Schedule FS—Fiduciary and Related Services, Schedule HC—Thrift Holding Company, Schedule CSS—Subordinate Organization Schedule, Schedule CCR—Consolidated Capital Requirement, and Schedule CMR—Consolidated Maturity and Rate, and on a proposed new schedule, Schedule FV—Consolidated Assets and Liabilities Measured at Fair Value on a Recurring Basis. The changes are proposed on a phased-in basis over 2009.

At the end of the comment period, OTS will analyze the comments and recommendations received to determine if it should modify the proposed revisions prior to giving its final approval. OTS will then submit the revisions to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments on or before December 1, 2008.

ADDRESSES: Send comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send facsimile transmissions to FAX number (202) 906–6518; send e-mails to *infocollection.comments@ots.treas.gov*; or hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., on business days between 9 a.m. and 4 p.m. All comments should refer to ''TFR Revisions—2009, OMB No. 1550–0023.'' OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can access sample copies of the proposed March, June, and December 2009 TFR forms on OTS's Web site at *http://www.ots.treas.gov* or you may request them by electronic mail from *tfr.instructions@ots.treas.gov*. You can request additional information about this proposed information collection from James Caton, Director, Financial Monitoring and Analysis Division, (202) 906–5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Number: OTS 1313.

Abstract: OTS is proposing to revise and extend for three years the TFR, which is currently an approved collection of information. All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter or less frequently if so stated. OTS uses this information to monitor the condition, performance, and risk profile of individual institutions and systemic risk among groups of institutions and the industry as a whole. Except for selected items, these information collections are not given confidential treatment.

Current Action:

OTS last revised the form and content of the TFR in a manner that significantly affected a substantial percentage of institutions in March 2007. During the past year OTS has evaluated its ongoing information needs. OTS recognizes that the TFR imposes reporting requirements, which are a component of the regulatory burden facing institutions. Another contributor to this regulatory burden is the examination process, particularly on-site examinations during which institution staff spends time and effort responding to inquiries and requests for information designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners direct to risk areas of the institution under examination is, in large part, determined from TFR data. These data, and analytical reports including the Uniform Thrift Performance Report, assist examiners in scoping and making their preliminary assessments of risks during the planning phase of the examination.

A risk-focused review of the information from an institution's TFR allows examiners to make preliminary risk assessments prior to onsite work. The degree of perceived risk determines the extent of the examination procedures that examiners initially plan for each risk area. If the outcome of these procedures reveals a higher level of risk in a particular area, the examiner adjusts the examination scope and procedures accordingly.

TFR data are also a vital source of information for the monitoring and regulatory activities of OTS. Among their benefits, these activities aid in determining whether the frequency of an institution's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused TFR data enhance the ability of OTS to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

The FDIC is considering proposing an adjustment to the risk-based assessment system so that insured depository institutions with greater amounts of general unsecured long-term liabilities will be rewarded with a lower assessment rate. Currently, the TFR lacks information regarding the remaining maturities of unsecured ''other borrowings'' and subordinated notes and debentures. Therefore, OTS proposes to collect this information in the TFR so that the FDIC would be able to implement such an adjustment. More specifically, thrifts would report separate maturity distributions for ''other borrowings'' that are unsecured and for subordinated notes and debentures. The maturity distributions would include remaining maturities of one year or less, and over one year.

In developing this proposal, OTS considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and identified those additions to the TFR that are most critical and relevant to OTS in fulfilling its supervisory responsibilities. At the same time, OTS has identified certain existing TFR line items that are no longer sufficiently critical or useful to warrant their continued collection. OTS recognizes that the reporting burden that would result from the addition to the TFR of the new items discussed in this proposal would not be fully offset by the proposed elimination of, or establishment of reporting thresholds for, a limited number of other TFR items, thereby resulting in a net increase in reporting burden. Nevertheless, when

viewing these proposed revisions to the TFR within a larger context, they help to enhance the on- and off-site supervision capabilities of OTS, which assist with controlling the overall regulatory burden on institutions.

Thus, OTS is requesting comment on the following proposed revisions to the TFR that would be implemented on a phased-in basis over 2009. The proposed TFR changes that would take effect as of March 31, 2009, would eliminate one line item, revise the captions for seven existing items, add four new items, and eliminate confidential treatment of fiduciary income, expense, and loss data in Schedule FS and data in Schedule HC.

The proposed TFR changes that would take effect as of June 30, 2009, would eliminate two existing items, revise two existing items, add 77 new items, add six new reporting codes in Schedule CMR, and add four new questions to Schedule SI on whether a thrift is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the thrift exercises trust powers.

The proposed TFR revisions that would take effect December 31, 2009, would eliminate the entire Schedule CSS from the TFR, would add 75 new line items for assets and liabilities measured at fair value on a recurring basis in a new Schedule FV—Consolidated Assets and Liabilities Measured at Fair Value on a Recurring Basis for thrifts with total assets greater than $10 billion, and would revise Schedule FS—Fiduciary and Related Services by revising 14 existing line items and adding 68 new line items.

For each of the proposed revisions of existing items or proposed new items, OTS is particularly interested in comments from institutions on whether the information that is proposed to be collected is readily available from existing institution records. OTS also invites comment on whether there are particular proposed revisions for which the new data would be of limited relevance for purposes of assessing risks in a specific segment of the savings association industry. In such cases, OTS requests comments on what criteria, e.g., an asset size threshold or some other measure, we should establish for identifying the specific segment of the savings association industry that we should require to report the proposed information. Finally, OTS seeks comment on whether, for a particular proposed revision, there is an alternative information set that could satisfy OTS data needs and be less burdensome for institutions to report than the new or revised items that OTS has proposed. OTS will consider all of the comments it receives as it formulates a final set of revisions to the TFR for implementation in 2009.

A. Burden-Reducing Revision

1. Eliminating Schedule CSS—Subordinate Organization Schedule;
2. Eliminating line SI805, Sell private-label/third-party mutual funds/annuities?;
3. Eliminating line SI860, Fee Income from the Sale/Servicing of Mutual Funds/Annuities; and
4. Eliminating line CCR190, Minority Interest in Includable Subsidiaries.

B. Revisions of Existing Items

1. Revising the caption of line SC800 from ''Minority Interest'' to ''Noncontrolling Interest in Consolidated Subsidiaries'', and moving this line to the Equity Capital section of Schedule SC;
2. Revising the caption of line SC80 from ''Total Equity Capital'' to ''Equity Capital Attributable to Noncontrolling Interest'';
3. Revising the caption of line SC90 from ''Total Liabilities, Minority Interest, and Equity Capital'' to ''Total Liabilities and Equity Capital;
4. Revising the caption of line SO91 from ''Net Income (Loss)'' to ''Net Income or Loss Attributable to Controlling Interest'';
5. Revising the caption for line SO430 from ''Noninterest Income—Net Income (Loss) from Other—Sale of Assets Held for Sale and Available-for-Sale Securities'' to Noninterest Income—Net Income (Loss) from Other—Sale of Available-for-Sale Securities'';
B. Revising the caption for line FS260 from ''Investment Management Agency Accounts—Amount of Managed Assets'' to ''Investment Management and Investment Advisory Accounts—Amount of Managed Assets'';
6. Revising the caption for line FS262 from ''Investment Management Agency Accounts—Number of Managed Accounts'' to ''Investment Management and Investment Advisory Accounts—Number of Managed Accounts'';
7. Revising the caption for line FS360 from ''Investment Management Agency Accounts'' to ''Investment Management & Investment Advisory Accounts'';
8. Revising line FS410 to Noninterest-Bearing Deposits—Personal Trust and Agency, Investment Management Agency Accounts;
9. Revising line FS415 to Interest-Bearing Deposits—Personal Trust and Agency, Investment Management Agency Accounts;
10. Revising line FS420 to U.S. Treasury and U.S. Government Agency Obligations—Personal Trust and Agency, Investment Management Agency Accounts;
11. Revising line FS425 to State, County, and Municipal Obligations—Personal Trust and Agency, Investment Management Agency Accounts;
12. Revising line FS430 to Common Trust Funds and Collective Investment Funds—Personal Trust and Agency, Investment Management Agency Accounts;
13. Revising line FS435 to Mutual Funds—Equity—Employee Benefit and Other Individual Retirement Accounts;
14. Revising line FS440 to Mutual Funds—Money Market—All Other Accounts;
15. Revising line FS445 to Mutual Funds—Other—Total;
16. Revising line FS450 to Short-Term Obligations—Personal Trust and Agency, Investment Management Agency Accounts;
17. Revising line FS455 to Other Notes and Bonds—Personal Trust and Agency, Investment Management Agency Accounts;
18. Revising line FS460 to Common and Preferred Stocks—Personal Trust and Agency, Investment Management Agency Accounts;
19. Revising the caption of line HC620 from ''Consolidated—Minority Interest'' to ''Consolidated—Noncontrolling Interest in Consolidated Subsidiaries'';
20. Revising the caption of line HC640 from ''Consolidated—Net Income for the Quarter'' to ''Consolidated—Net Income or Loss Attributable to Controlling Interest'';
21. Revising the language for question HC840 from ''Is the holding company or any of its subsidiaries regulated by a foreign financial services regulator?'' to ''Is the holding company or any of its affiliates conducting operations outside of the U.S. through a foreign branch or subsidiary?''; and
22. Revising the caption of line CCR105 from ''Investments in and Advances to Nonincludable Subsidiaries'' to ''Investments in, Advances to, and Noncontrolling Interest in Nonincludable Subsidiaries''.

C. New Items

1. Adding a line, SC84, Total Equity Capital;
2. Adding a line, SO431, Noninterest Income—Net Income (Loss) from Other—Sale of Loans and Leases Held for Sale;
3. Adding a line, SO432, Noninterest Income—Net Income (Loss) from Other—Sale of Other Assets Held for Sale;

4. Adding a line, SO440, ''Other-than-Temporary Impairment Charges on Debt and Equity Securities'';
5. Adding a line, SO99, ''Net Income or Loss—Total'';
6. Adding a line, SO93, ''Net Income or Loss Attributable to Noncontrolling Interest'';
7. Adding a line, VA979, Credit Card Charge-Offs Related to Accrued Interest;
8. Adding a line, PD40, Total Loans in Process of Foreclosure;
9. Adding a line, PD415, Construction Loans in Process of Foreclosure;
10. Adding a line, PD421, 1–4 Dwelling Units Secured by Revolving Open-End Loans in Process of Foreclosure;
11. Adding a line, PD423, 1–4 Dwelling Units Secured by First Liens in Process of Foreclosure;
12. Adding a line, PD424, 1–4 Dwelling Units Secured by Junior Liens in Process of Foreclosure;
13. Adding a line, PD425, Multifamily (5 or more) Dwelling Units in Process of Foreclosure;
14. Adding a line, PD435, Nonresidential Property (Except Land) in Process of Foreclosure;
15. Adding a line PD438, Land Loans in Process of Foreclosure;
16. Adding a line, LD111, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Balances at Quarter-End: 90% up to 100% LTV;
17. Adding a line, LD121, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Balances at Quarter-End: 100% and greater LTV;
18. Adding a line, LD211, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 30–89 Days: 90% up to 100% LTV;
19. Adding a line, LD221, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 30–89 Days: 100% and greater LTV;
20. Adding a line, LD231, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 90 Days or More: 90% up to 100% LTV;
21. Adding a line, LD241, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 90 Days or More: 100% and greater LTV;
22. Adding a line, LD251, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Nonaccrual: 90% up to 100% LTV;
23. Adding a line, LD261, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Nonaccrual: 100% and greater LTV;
24. Adding a line, LD311, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Charge-offs and Recoveries: Net Charge-offs (including Specific Valuation Allowance Provisions & Transfers from General to Specific Allowances): 90% up to 100% LTV;
25. Adding a line, LD321, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Charge-offs and Recoveries: Net Charge-offs (including Specific Valuation Allowance Provisions & Transfers From General to Specific Allowances): 100% and greater LTV;
26. Adding a line, LD411, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Purchases: 90% up to 100% LTV;
27. Adding a line, LD421, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Purchases: 100% and greater LTV;
28. Adding a line, LD431, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Originations: 90% up to 100% LTV;
29. Adding a line, LD441, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Originations: 100% and greater LTV;
30. Adding a line, LD451, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Sales: 90% up to 100% LTV;
31. Adding a line, LD461, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Sales: 100% and greater LTV;
32. Adding a line, LD710, Construction Loans on 1–4 Dwelling Units with Capitalized Interest;
33. Adding a line, LD715, Capitalized Interest on Construction Loans on 1–4 Dwelling Units Included in Current Quarter Income;
34. Adding a line, LD720, Construction Loans on Multifamily (5 or More) Dwelling Units with Capitalized Interest;
35. Adding a line, LD725, Capitalized Interest on Construction Loans on Multifamily (5 or More) Dwelling Units Included in Current Quarter Income;
36. Adding a line, LD730, Construction Loans on Nonresidential Property (Except Land) with Capitalized Interest;
37. Adding a line, LD735, Capitalized Interest on Construction Loans on Nonresidential Property (Except Land) Included in Current Quarter Income;
38. Adding a line, CC469, Amount of Recourse Obligations on Loans in CC468 where Recourse Limited to 120 Days or Less;
39. Adding a line, CC471, Amount of Recourse Obligations on Loans in CC468 where Recourse Extends Beyond 120 Days;
40. Adding a line, CF365, Memo—Loans Sold with Recourse of 120 Days or Less;
41. Adding a line, CF366, Memo—Loans Sold with Recourse Greater Than 120 Days;
42. Adding a line, DI230, Deposits Gathered through CDARS;
43. Adding a line, DI630, Unsecured Federal Funds Purchased;
44. Adding a line, DI635, Secured Federal Funds Purchased;
45. Adding a line, DI641, Securities Sold Under Agreements to Repurchase;
46. Adding a line, DI645, Unsecured ''Other Borrowings''—With a Remaining Maturity of One Year or Less;
47. Adding a line, DI651, Unsecured ''Other Borrowings''—With a Remaining Maturity of Over One Year;
48. Adding a line, DI655, Subordinated Debentures—With a Remaining Maturity of One Year or Less;
49. Adding a line, DI660, Subordinated Debentures—With a Remaining Maturity of Over One Year;
50. Adding a line, SI394, Pledged Loans;
51. Adding a line, SI395, Pledged Securities;
52. Adding a question SI901, ''Does the institution, without trust powers, act as trustee or custodian for Individual Health Savings Accounts, and other similar accounts that are invested in non-deposit products?'';
53. Adding a question SI905, ''Does the institution provide custody, safekeeping or other services involving the acceptance of orders for the sale or purchase of securities?'';
54. Adding a question SI911, ''Does the institution engage in third party broker arrangements, commonly referred to as ''networking'', to sell securities products or services to thrift customers?''; and
55. Adding a question SI915, ''Does the institution sweep deposit funds into any open-end investment management company registered under the Investment Company Act of 1940 that

holds itself out as a money market fund?''.

The following additions to the TFR are proposed for collection through a new Schedule FV that would be required from thrifts with total assets greater than $10 billion:

56. Adding a line, FV110, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Total Fair Value Reported;

57. Adding a line, FV111, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Amounts Netted in the Determination of Fair Value;

58. Adding a line, FV112, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 1 Fair Value Measurements;

59. Adding a line, FV113, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 2 Fair Value Measurements;

60. Adding a line, FV114, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 3 Fair Value Measurements;

61. Adding a line, FV120, Trading Securities—Total Fair Value Reported;

62. Adding a line, FV121, Trading Securities—Amounts Netted in the Determination of Fair Value;

63. Adding a line, FV122, Trading Securities—Level 1 Fair Value Measurements;

64. Adding a line, FV123, Trading Securities—Level 2 Fair Value Measurements;

65. Adding a line, FV124, Trading Securities—Level 3 Fair Value Measurements;

66. Adding a line, FV130, Available-for-Sale Securities—Total Fair Value Reported;

67. Adding a line, FV131, Available-for-Sale Securities—Amounts Netted in the Determination of Fair Value;

68. Adding a line, FV132, Available-for-Sale Securities—Level 1 Fair Value Measurements;

69. Adding a line, FV133, Available-for-Sale Securities—Level 2 Fair Value Measurements;

70. Adding a line, FV134, Available-for-Sale Securities—Level 3 Fair Value Measurements;

71. Adding a line, FV210, Loans and Leases—Total Fair Value Reported;

72. Adding a line, FV211, Loans and Leases—Amounts Netted in the Determination of Fair Value;

73. Adding a line, FV212, Loans and Leases—Level 1 Fair Value Measurements;

74. Adding a line, FV213, Loans and Leases—Level 2 Fair Value Measurements;

75. Adding a line, FV214, Loans and Leases—Level 3 Fair Value Measurements;

76. Adding a line, FV240, Mortgage Servicing Rights—Total Fair Value Reported;

77. Adding a line, FV241, Mortgage Servicing Rights—Amounts Netted in the Determination of Fair Value;

78. Adding a line, FV242, Mortgage Servicing Rights—Level 1 Fair Value Measurements;

79. Adding a line, FV243, Mortgage Servicing Rights—Level 2 Fair Value Measurements;

80. Adding a line, FV244, Mortgage Servicing Rights—Level 3 Fair Value Measurements;

81. Adding a line, FV250, Derivative Assets—Total Fair Value Reported;

82. Adding a line, FV251, Derivative Assets—Amounts Netted in the Determination of Fair Value;

83. Adding a line, FV252, Derivative Assets—Level 1 Fair Value Measurements;

84. Adding a line, FV253, Derivative Assets—Level 2 Fair Value Measurements;

85. Adding a line, FV254, Derivative Assets—Level 3 Fair Value Measurements;

86. Adding a line, FV310, All Other Financial Assets—Total Fair Value Reported;

87. Adding a line, FV311, All Other Financial Assets—Amounts Netted in the Determination of Fair Value;

88. Adding a line, FV312, All Other Financial Assets—Level 1 Fair Value Measurements;

89. Adding a line, FV313, All Other Financial Assets—Level 2 Fair Value Measurements;

90. Adding a line, FV314, All Other Financial Assets—Level 3 Fair Value Measurements;

91. Adding a line, FV360, Total Assets Measured at Fair Value on a Recurring Basis—Total Fair Value Reported;

92. Adding a line, FV361, Total Assets Measured at Fair Value on a Recurring Basis—Amounts Netted in the Determination of Fair Value;

93. Adding a line, FV362, Total Assets Measured at Fair Value on a Recurring Basis—Level 1 Fair Value Measurements;

94. Adding a line, FV363, Total Assets Measured at Fair Value on a Recurring Basis—Level 2 Fair Value Measurements;

95. Adding a line, FV364, Total Assets Measured at Fair Value on a Recurring Basis—Level 3 Fair Value Measurements;

96. Adding a line, FV410, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Total Fair Value Reported;

97. Adding a line, FV411, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Amounts Netted in the Determination of Fair Value;

98. Adding a line, FV412, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 1 Fair Value Measurements;

99. Adding a line, FV413, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 2 Fair Value Measurements;

100. Adding a line, FV414, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 3 Fair Value Measurements;

101. Adding a line, FV420, Deposits—Total Fair Value Reported;

102. Adding a line, FV421, Deposits—Amounts Netted in the Determination of Fair Value;

103. Adding a line, FV422, Deposits—Level 1 Fair Value Measurements;

104. Adding a line, FV423, Deposits—Level 2 Fair Value Measurements;

105. Adding a line, FV424, Deposits—Level 3 Fair Value Measurements;

106. Adding a line, FV440, Subordinated Debentures—Total Fair Value Reported;

107. Adding a line, FV441, Subordinated Debentures—Amounts Netted in the Determination of Fair Value;

108. Adding a line, FV442, Subordinated Debentures—Level 1 Fair Value Measurements;

109. Adding a line, FV443, Subordinated Debentures—Level 2 Fair Value Measurements;

110. Adding a line, FV444, Subordinated Debentures—Level 3 Fair Value Measurements;

111. Adding a line, FV460, Other Borrowings—Total Fair Value Reported;

112. Adding a line, FV461, Other Borrowings—Amounts Netted in the Determination of Fair Value;

113. Adding a line, FV462, Other Borrowings—Level 1 Fair Value Measurements;

114. Adding a line, FV463, Other Borrowings—Level 2 Fair Value Measurements;

115. Adding a line, FV464, Other Borrowings—Level 3 Fair Value Measurements;

116. Adding a line, FV470, Derivative Liabilities—Total Fair Value Reported;

117. Adding a line, FV471, Derivative Liabilities—Amounts Netted in the Determination of Fair Value;

118. Adding a line, FV472, Derivative Liabilities—Level 1 Fair Value Measurements;

119. Adding a line, FV473, Derivative Liabilities—Level 2 Fair Value Measurements;

120. Adding a line, FV474, Derivative Liabilities—Level 3 Fair Value Measurements;
121. Adding a line, FV490, All Other Financial Liabilities—Total Fair Value Reported;
122. Adding a line, FV491, All Other Financial Liabilities—Amounts Netted in the Determination of Fair Value;
123. Adding a line, FV492, All Other Financial Liabilities—Level 1 Fair Value Measurements;
124. Adding a line, FV493, All Other Financial Liabilities—Level 2 Fair Value Measurements;
125. Adding a line, FV494, All Other Financial Liabilities—Level 3 Fair Value Measurements;
126. Adding a line, FV510, Total Liabilities Measured at Fair Value on a Recurring Basis—Total Fair Value Reported;
127. Adding a line, FV511, Total Liabilities Measured at Fair Value on a Recurring Basis—Amounts Netted in the Determination of Fair Value;
128. Adding a line, FV512, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 1 Fair Value Measurements;
129. Adding a line, FV513, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 2 Fair Value Measurements;
130. Adding a line, FV514, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 3 Fair Value Measurements;
131. Adding a line, FS234, IRAs, HSAs, and Similar Accounts—Amount of Managed Assets;
132. Adding a line, FS235, IRAs, HSAs, and Similar Accounts—Amount of Nonmanaged Assets;
133. Adding a line, FS236, IRAs, HSAs, and Similar Accounts—Number of Managed Accounts;
134. Adding a line, FS237, IRAs, HSAs, and Similar Accounts—Number of Nonmanaged Accounts;
135. Adding a line, FS261, Investment Management and Investment Advisory Accounts—Amount of Nonmanaged Assets;
136. Adding a line, FS263, Investment Management and Investment Advisory Accounts—Number of Nonmanaged Accounts;
137. Adding a line, FS264, Foundations and Endowments—Amount of Managed Assets;
138. Adding a line, FS265, Foundations and Endowments—Amount of Nonmanaged Assets;
139. Adding a line, FS266, Foundations and Endowments—Number of Managed Accounts;
140. Adding a line, FS267, Foundations and Endowments—Number of Nonmanaged Accounts;
141. Adding a line, FS335, Fiduciary and Related Services Income—IRAs, HSAs, and Similar Accounts;
142. Adding a line, FS411, Noninterest-Bearing Deposits—Employee Benefit and Other Individual Retirement Accounts;
143. Adding a line, FS412, Noninterest-Bearing Deposits—All Other Accounts;
144. Adding a line, FS413, Noninterest-Bearing Deposits—Total;
145. Adding a line, FS416, Interest-Bearing Deposits—Employee Benefit and Other Individual Retirement Accounts;
146. Adding a line, FS417, Interest-Bearing Deposits—All Other Accounts;
147. Adding a line, FS418, Interest-Bearing Deposits—Total;
148. Adding a line, FS421, U.S. Treasury and U.S. Government Agency Obligations—Employee Benefit and Other Individual Retirement Accounts;
149. Adding a line, FS422, U.S. Treasury and U.S. Government Agency Obligations—All Other Accounts;
150. Adding a line, FS423, U.S. Treasury and U.S. Government Agency Obligations—Total;
151. Adding a line, FS426, State, County, and Municipal Obligations—Employee Benefit and Other Individual Retirement Accounts;
152. Adding a line, FS427, State, County, and Municipal Obligations—All Other Accounts;
153. Adding a line, FS428, State, County, and Municipal Obligations—Total;
154. Adding a line, FS431, Common Trust Funds and Collective Investment Funds—Employee Benefit and Other Individual Retirement Accounts;
155. Adding a line, FS432, Common Trust Funds and Collective Investment Funds—All Other Accounts;
156. Adding a line, FS433, Common Trust Funds and Collective Investment Funds—Total;
157. Adding a line, FS434, Mutual Funds—Equity—Personal Trust and Agency, Investment Management Agency Accounts;
158. Adding a line, FS436, Mutual Funds—Equity—All Other Accounts;
159. Adding a line, FS437, Mutual Funds—Equity—Total;
160. Adding a line, FS438, Mutual Funds—Money Market—Personal Trust and Agency, Investment Management Agency Accounts;
161. Adding a line, FS439, Mutual Funds—Money Market—Employee Benefit and Other Individual Retirement Accounts;
162. Adding a line, FS441, Mutual Funds—Money Market—Total;
163. Adding a line, FS442, Mutual Funds—Other—Personal Trust and Agency, Investment Management Agency Accounts;
164. Adding a line, FS443, Mutual Funds—Other—Employee Benefit and Other Individual Retirement Accounts;
165. Adding a line, FS444, Mutual Funds—Other—All Other Accounts;
166. Adding a line, FS451, Short-Term Obligations—Employee Benefit and Other Individual Retirement Accounts;
167. Adding a line, FS452, Short-Term Obligations—All Other Accounts;
168. Adding a line, FS453, Short-Term Obligations—Total;
169. Adding a line, FS456, Other Notes and Bonds—Employee Benefit and Other Individual Retirement Accounts;
170. Adding a line, FS457, Other Notes and Bonds—All Other Accounts;
171. Adding a line, FS458, Other Notes and Bonds—Total;
172. Adding a line, FS461, Common and Preferred Stocks—Employee Benefit and Other Individual Retirement Accounts;
173. Adding a line, FS462, Common and Preferred Stocks—All Other Accounts;
174. Adding a line, FS463, Common and Preferred Stocks—Total;
175. Adding a line, FS465, Real Estate Mortgages—Personal Trust and Agency, Investment Management Agency Accounts;
176. Adding a line, FS466, Real Estate Mortgages—Employee Benefit and Other Individual Retirement Accounts;
177. Adding a line, FS467, Real Estate Mortgages—All Other Accounts;
178. Adding a line, FS468, Real Estate Mortgages—Total;
179. Adding a line, FS470, Real Estate—Personal Trust and Agency, Investment Management Agency Accounts;
180. Adding a line, FS471, Real Estate—Employee Benefit and Other Individual Retirement Accounts;
181. Adding a line, FS472, Real Estate—All Other Accounts;
182. Adding a line, FS473, Real Estate—Total;
183. Adding a line, FS475, Miscellaneous Assets—Personal Trust and Agency, Investment Management Agency Accounts;
184. Adding a line, FS476, Miscellaneous Assets—Employee Benefit and Other Individual Retirement Accounts;
185. Adding a line, FS477, Miscellaneous Assets—All Other Accounts;
186. Adding a line, FS478, Miscellaneous Assets—Total;
187. Adding a line, FS480, Investments in Unregistered Funds and

Private Equity Investments—Personal Trust and Agency, Investment Management Agency Accounts;

188. Adding a line, FS481, Investments in Unregistered Funds and Private Equity Investments—Employee Benefit and Other Individual Retirement Accounts;

189. Adding a line, FS482, Investments in Unregistered Funds and Private Equity Investments—All Other Accounts;

190. Adding a line, FS483, Investments in Unregistered Funds and Private Equity Investments—Total;

191. Adding a line, FS490, Total Managed Assets—Personal Trust and Agency, Investment Management Agency Accounts;

192. Adding a line, FS491, Total Managed Assets—Employee Benefit and Other Individual Retirement Accounts;

193. Adding a line, FS492, Total Managed Assets—All Other Accounts;

194. Adding a line, FS493, Total Managed Assets—Total;

195. Adding a line, FS495, Investments of Managed Fiduciary Accounts in Advised or Sponsored Mutual Funds—Market Value of Discretionary Investments in Proprietary Mutual Funds;

196. Adding a line, FS496, Investments of Managed Fiduciary Accounts in Advised or Sponsored Mutual Funds—Number of Managed Assets Holding Investments in Proprietary Mutual Funds;

197. Adding a line, FS516, Corporate and Municipal Trusteeships—Issues Reported in FS520 and FS515 that are in Default—Number of Issues;

198. Adding a line, FS517, Corporate and Municipal Trusteeships—Issues Reported in FS520 and FS515 that are in Default—Principal Amount Outstanding;

199. Adding a line, HC221, Parent Only Perpetual Preferred Stock: Cumulative;

200. Adding a line, HC222, Parent Only Perpetual Preferred Stock: Noncumulative;

201. Adding a line, HC223, Parent Only Common Stock: Par Value;

202. Adding a line, HC224, Parent Only Common Stock: Paid in Excess of Par;

203. Adding a line, HC225, Parent Only Accumulated Other Comprehensive Income: Unrealized Gains (Losses) on Available-for-Sale Securities;

204. Adding a line, HC226, Parent Only Accumulated Other Comprehensive Income: Gains (Losses) on Cash Flow Hedges;

205. Adding a line, HC227, Parent Only Accumulated Other Comprehensive Income: Other;

206. Adding a line, HC228, Parent Only Retained Earnings;

207. Adding a line, HC229, Parent Only Other Components of Equity Capital;

208. Adding a line, HC301, Parent Only Cash, Deposits, and Investment Securities;

209. Adding a line, HC505, Parent Only Interest Income;

210. Adding a line, HC509, Parent Only Total Income;

211. Adding a line, HC570, Parent Only Total Expense;

212. Adding a line, HC571, Parent Only Total Income Taxes;

213. Adding a line, HC575, Parent Only Dividends Paid;

214. Adding a line, HC601, Consolidated Cash, Deposits, and Investment Securities;

215. Adding a line, HC621, Consolidated Perpetual Preferred Stock: Cumulative;

216. Adding a line, HC622, Consolidated Perpetual Preferred Stock: Noncumulative;

217. Adding a line, HC623, Consolidated Common Stock: Par Value;

218. Adding a line, HC624, Consolidated Common Stock: Paid in Excess of Par;

219. Adding a line, HC625, Consolidated Accumulated Other Comprehensive Income: Unrealized Gains (Losses) on Available-for-Sale Securities;

220. Adding a line, HC626, Consolidated Accumulated Other Comprehensive Income: Gains (Losses) on Cash Flow Hedges;

221. Adding a line, HC627, Consolidated Accumulated Other Comprehensive Income: Other;

222. Adding a line, HC628, Consolidated Only Retained Earnings;

223. Adding a line, HC629, Consolidated Only Other Components of Equity Capital. ≤224. Adding a line, HC705, Consolidated Interest Income;

225. Adding a line, HC709, Consolidated Total Income;

226. Adding a line, HC770, Consolidated Total Expense;

227. Adding a line, HC771, Consolidated Total Income Taxes;

228. Adding a line, HC775, Consolidated Dividends Paid;

229. Adding a new code to Schedule CMR, Miscellaneous: Collateralized Debt Obligations: Carrying Value;

230. Adding a new code to Schedule CMR, Miscellaneous: Collateralized Debt Obligations: Market Value;

231. Adding a new code to Schedule CMR, Miscellaneous: Collateralized Loan Obligations: Carrying Value; ≤232. Adding a new code to Schedule CMR, Miscellaneous: Collateralized Loan Obligations: Market Value;

233. Adding a new code to Schedule CMR, Miscellaneous: Commercial Mortgage-Backed Securities: Carrying Value; and

234. Adding a new code to Schedule CMR, Miscellaneous: Commercial Mortgage-Backed Securities: Market Value.

D. Eliminating Confidential Treatment of Schedule FS and Schedule HC Data

The specific wording of the captions for the new and revised TFR items discussed in this proposal and the numbering of these items in the report is preliminary.

II. Discussion of Revisions Proposed for March 2009

A. Backgound

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 160, ''Noncontrolling Interests in Consolidated Financial Statements'' (FAS 160). Under this Statement, a noncontrolling interest, formerly referred to as a minority interest, is that portion of total stockholders' equity and total net income or loss that is not attributable, directly or indirectly, to the parent; that is, to the controlling interest. FAS 160 changes the placement of the noncontrolling interest on the balance sheet and income statement. For savings associations and holding companies with a calendar year-end, the Statement becomes effective in the first quarter of 2009. Accordingly, OTS proposes to make certain changes to Schedules SC, SO, HC, and CCR.

B. Elimination of Existing Items

1. As a result of the issuance of FAS 160 (see Background above), OTS proposes to eliminate line CCR190, Minority Interest in Includable Subsidiaries.

C. Revision of Existing Items

1. As a result of the issuance of FAS 160 (see Background above), OTS proposes to revise the captions of lines SC800, Minority Interest, SC80, Total Equity Capital, SC90, Total Liabilities, Minority Interest, and Equity Capital, SO 91, Net Income (Loss), HC620, Minority Interest, HC640, Net Income for the Quarter, and CCR105, Minority Interest in Nonincludable Subsidiaries.

D. New Items

1. As a result of the issuance of FAS 160 (see Background above), OTS proposes to add lines SC84, Total Equity Capital, SO99, Net Income or Loss—Total, and SO93, Net Income or Loss Attributable to Noncontrolling Interest.

2. To separately capture impairment charges on debt and equity securities, OTS proposes to add line SO440, Other-than-Temporary Impairment Charges on Debt and Equity Securities.

E. Eliminating Confidential Treatment of Schedule FS and Schedule HC Data

An important public policy issue for the federal banking regulatory agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having sufficient appropriate information about the financial condition and risks of banks, thrifts, and their holding companies. The TFR is widely used by securities analysts, rating agencies, and large institutional investors as sources of thrift-specific data. Disclosure that increases transparency should lead to more accurate market assessments of individual banks' performance and risks. This, in turn, should result in more effective market discipline on thrifts.

Despite this emphasis on market discipline, OTS currently accords confidential treatment to the information that certain institutions report in Schedule FS—Fiduciary and Related Services, on fiduciary and related services income, expenses, and losses reported on lines FS310 through FS393, FS30, and FS35; and on fiduciary settlements, surcharges, and other losses reported on lines FS710 through FS742, FS70, FS71, and FS72. OTS also accords confidential treatment to all of the information that certain institutions report in Schedule HC—Thrift Holding Company.

1. Eliminating Confidential Treatment of Schedule FS Data

Data on fiduciary and related services income, expenses, and losses is treated as confidential on an individual institution basis. Nevertheless, OTS publishes aggregate data derived from these confidential items. OTS does not preclude institutions from publicly disclosing the fiduciary and related services income, expense, and loss data that the agencies treat as confidential.

In addition, under the Uniform Interagency Trust Rating System, the agencies assign a rating to the earnings of an institution's fiduciary activities at those institutions with fiduciary assets of more than $100 million, which are also the institutions that report their fiduciary and related services income, expenses, and losses in Call Report Schedule RC–T. The agencies' evaluation of an institution's trust earnings considers such factors as the profitability of fiduciary activities in relation to the size and scope of those activities and the institution's overall business, taking this into account by functions and product lines. Although the agencies' ratings for individual institutions are not publicly available, the reason for rating the trust earnings of institutions with more than $100 million in fiduciary assets—its effect on the financial condition of the institution—means that fiduciary and related services income, expenses, and losses information for these institutions is also relevant to market participants and others in the public as they seek to evaluate the financial condition and performance of individual institutions. Increasing the transparency of institutions' fiduciary activities by making individual institutions' fiduciary income, expense, and loss data available to the public should improve the market's ability to assess these institutions' performance and risks and thereby enhance market discipline. Accordingly, the agencies are proposing to eliminate the confidential treatment for the data on fiduciary and related services income, expenses, and losses that are reported in Schedule RC-T beginning with the amounts reported as of March 31, 2009.

2. Eliminating Confidential Treatment of Schedule HC Data

OTS is requesting comments on the continued confidential treatment of data filed by individual thrift holding companies on Schedule HC. OTS presently does not publicly release Schedule HC data filed by holding companies. However, many public requests are received for these data. In addition, some rating agencies have indicated thrift holding company debt ratings suffer due to the lack of publicly available data.

III. Discussion of Revisions Proposed for June 2009

A. Elimination of Existing Items:

1. Schedule SI—Consolidated Supplemental Information

OTS proposes to eliminate the following two line items from Schedule SI:

SI805, Sell private-label/third-party mutual funds/annuities; and

SI860—Fee Income from the Sale/Servicing of Mutual Funds/Annuities.

Line SI805 is a yes/no question regarding the sale of private label or third party mutual funds and annuities. Line SI860 reports the amount of fee income from the sale and servicing of mutual funds and annuities. Institutions that provided a yes response to line SI805 will now provide the same response to new line SI911. OTS believes the data reported in line SI860 can be collected independently of the TFR reporting system during the examination process.

B. Revisions of Existing Items:

1. Revising the caption for line SO430 from ''Noninterest Income—Net Income (Loss) from Other—Sale of Assets Held for Sale and Available-for-Sale Securities'' to Noninterest Income—Net Income (Loss) from Other—Sale of Available-for-Sale Securities'' to separately report gains and losses on the sale of available-for-sale securities from gains and losses on loans and leases held for sale and on other assets held for sale. Gains and losses on loans and leases held for sale and on other assets held for sale would be reported in new lines SO431 and SO432 described below; and

2. Revising the language for question HC840 from ''Is the holding company or any of its subsidiaries regulated by a foreign financial services regulator?'' to ''Is the holding company or any of its affiliates conducting operations outside of the U.S. through a foreign branch or subsidiary?'' This line is being revised to more fully identify holding companies with foreign operations, including parallel banking operations. A parallel banking organization exists when at least one U.S. bank and one foreign financial institution are controlled either directly or indirectly by the same person or group of persons who are closely associated in their business dealings or otherwise acting together, but are not subject to consolidated supervision by a single home country supervisor. A foreign financial institution includes a holding company of the foreign bank and any U.S. or foreign affiliates of the foreign bank.

C. New Items

1. Noninterest Income

OTS proposes to add two lines related to gains and losses on the sale of loans and leases held for sale and on other assets held for sale:

SO431, Noninterest Income—Net Income (Loss) from Other—Sale of Loans and Leases Held for Sale; and

SO432, Noninterest Income—Net Income (Loss) from Other—Sale of Other Assets Held for Sale.

These new lines, in conjunction with the revised line SO430 described above, will allow thrifts to separately report gains and losses on the sale of available-for-sale securities, on loans and leases held for sale, and on other assets held for sale.

2. Credit Card Charge-Offs Related to Accrued Interest

OTS proposes to add a line, VA979, Credit Card Charge-Offs Related to Accrued Interest, to capture data on the amount of credit card charge-offs that are due to accrued interest. This change is being made at the request of the FDIC to improve their deposit insurance premium assessment process.

3. Loans in Process of Foreclosure

OTS proposes to add a series of eight lines to Schedule PD related to loans in the process of foreclosure:

PD40, Total Loans in Process of Foreclosure;

PD415, Construction Loans in Process of Foreclosure;

PD421, 1–4 Dwelling Units Secured by Revolving Open-End Loans in Process of Foreclosure;

PD423, 1–4 Dwelling Units Secured by First Liens in Process of Foreclosure;

PD424, 1–4 Dwelling Units Secured by Junior Liens in Process of Foreclosure;

PD425, Multifamily (5 or more) Dwelling Units in Process of Foreclosure;

PD435, Nonresidential Property (Except Land) in Process of Foreclosure; and

PD438, Land Loans in Process of Foreclosure.

OTS believes these new line items will provide additional detail on the various types of real estate loans in the process of foreclosure. With these new data items, OTS will be better able to monitor the asset quality and risk profiles of thrifts.

Thrifts would report total unpaid principal balance of loans secured by the various types of real estate for which formal foreclosure proceedings to seize the real estate collateral have started and are ongoing as of quarter-end, regardless of the date the foreclosure procedure was initiated. Loans would be classified as in process of foreclosure according to local requirements.

4. High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee

OTS proposes to add a series of 16 lines to Schedule LD related to high loan-to-value loans secured by multifamily properties without private mortgage insurance (PMI) or government guarantee:

LD111, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Balances at Quarter-End: 90% up to 100% LTV;

LD121, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Balances at Quarter-End: 100% and greater LTV;

LD211, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 30–89 Days: 90% up to 100% LTV;

LD221, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 30–89 Days: 100% and greater LTV;

LD231, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 90 Days or More: 90% up to 100% LTV;

LD241, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Past Due and Still Accruing: 90 Days or More: 100% and greater LTV;

LD251, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Nonaccrual: 90% up to 100% LTV;

LD261, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Past Due and Nonaccrual Balances: Nonaccrual: 100% and greater LTV;

LD311, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Charge-offs and Recoveries: Net Charge-offs (including Specific Valuation Allowance Provisions & Transfers from General to Specific Allowances): 90% up to 100% LTV;

LD321, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Charge-offs and Recoveries: Net Charge-offs (including Specific Valuation Allowance Provisions & Transfers From General to Specific Allowances): 100% and greater LTV;

LD411, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Purchases: 90% up to 100% LTV;

LD421, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Purchases: 100% and greater LTV;

LD431, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Originations: 90% up to 100% LTV;

LD441, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Originations: 100% and greater LTV;

LD451, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Sales: 90% up to 100% LTV; and

LD461, High Loan-to-Value Loans Secured by Multifamily Properties without PMI or Government Guarantee: Sales: 100% and greater LTV.

OTS believes these new line items will provide additional detail on high loan-to-value loans secured by multifamily properties held by thrifts, including detail on delinquencies, nonaccruals, and net charge-offs, and data on such loans originated, purchased, or sold during the reporting period. With these new data items, OTS will be better able to monitor the risk profiles of thrifts with concentrations of high loan-to-value multifamily mortgage loans.

5. Construction Loans with Capitalized Interest

OTS proposes to add a series of six lines to Schedule LD related to construction loans with capitalized interest:

LD710, Construction Loans on 1–4 Dwelling Units with Capitalized Interest;

LD715, Capitalized Interest on Construction Loans on 1–4 Dwelling Units Included in Current Quarter Income;

LD720, Construction Loans on Multifamily (5 or More) Dwelling Units with Capitalized Interest;

LD725, Capitalized Interest on Construction Loans on Multifamily (5 or More) Dwelling Units Included in Current Quarter Income;

LD730, Construction Loans on Nonresidential Property (Except Land) with Capitalized Interest; and

LD735, Capitalized Interest on Construction Loans on Nonresidential Property (Except Land) Included in Current Quarter Income.

OTS believes these new line items will provide additional detail on the use of capitalized interest in connection with various types of construction loans. With these new data items, OTS will be better able to monitor the risk profiles of thrifts with concentrations of construction loans.

6. Recourse Obligations on Loans in Line CC468

OTS proposes to add two lines to Schedule CC related to recourse obligations on loans in CC468, Amount of Recourse Obligations on Assets in CC455 (Line CC455 is the Total Principal Amount of Assets Covered by Recourse Obligations or Direct Credit Substitutes):

CC469, Amount of Recourse Obligations on Loans in CC468 where Recourse Limited to 120 Days or Less; and

CC471, Amount of Recourse Obligations on Loans in CC468 where Recourse Extends Beyond 120 Days.

OTS believes these new line items will provide additional detail on the amount of assets with recourse obligations held by thrifts.

7. Loans Sold with Recourse

OTS proposes to add two lines to Schedule CF related to loans sold during the current reporting period with recourse obligations:

CF365, Memo—Loans Sold with Recourse of 120 Days or Less; and

CF366, Memo—Loans Sold with Recourse Greater Than 120 Days.

OTS believes these new line items will provide additional detail on the quarterly amount of loans sold with recourse obligations held by thrifts.

8. Deposits Gathered Through CDARS

OTS proposes to add a line to Schedule DI related to deposits gathered through the Certificate of Deposit Account Registry Service (CDARS):

DI230, Deposits Gathered through CDARS.

CDARS member institutions accept depositor funds and place these into certificates of deposit issued by financial institutions in the network. This occurs in amounts that ensure that both principal and interest are eligible for full FDIC insurance. OTS believes this new line item will provide additional detail on the deposit funding sources used by thrifts.

9. Additions for Deposit Assessment-Related Purposes

At the request of the Federal Deposit Insurance Corporation for deposit assessment-related purposes, the OTS proposes to add the following seven lines to Schedule DI:

DI630, Unsecured Federal Funds Purchased;

DI635, Secured Federal Funds Purchased;

DI641, Securities Sold Under Agreements to Repurchase;

DI645, Unsecured ''Other Borrowings''—With a Remaining Maturity of One Year or Less;

DI651, Unsecured ''Other Borrowings''—With a Remaining Maturity of Over One Year;

DI655, Subordinated Debentures—With a Remaining Maturity of One Year or Less; and

DI660, Subordinated Debentures—With a Remaining Maturity of Over One Year.

The additional reporting detail by maturity is proposed as the FDIC plans to provide a reduction in assessment rates to institutions with longer-term unsecured borrowings and subordinated debt. The FDIC believes that such borrowing and debt will likely remain when an institution fails, thus providing a cushion to help protect the Deposit Insurance Fund.

10. Pledged Loans and Securities

OTS proposes to add two lines to Schedule SI related to loans and securities pledged as collateral for loans:

SI394, Pledged Loans; and

SI395, Pledged Trading Assets.

OTS believes these new line items will provide additional detail on the amount of loans and securities pledged by thrifts as collateral for loans. These data items will permit OTS to better monitor the risk profiles of thrifts with concentrations of pledged loans and securities.

11. Questions Relating to Thrift Activities

OTS proposes to add the following four new questions to Schedule SI:

SI901, ''Does the institution, without trust powers, act as trustee or custodian for Individual Health Savings Accounts, and other similar accounts that are invested in non-deposit products?'';

SI905, ''Does the institution provide custody, safekeeping or other services involving the acceptance of orders for the sale or purchase of securities?'';

SI911, ''Does the institution engage in third party broker arrangements, commonly referred to as 'networking', to sell securities products or services to thrift customers?''; and

SI915, ''Does the institution sweep deposit funds into any open-end investment management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund?''.

The questions relate to whether a thrift is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the thrift exercises trust powers.

12. Holding Company Data

OTS proposes to add a series of 30 lines to Schedule HC to provide additional detailed data on the thrift holding company parent and on a consolidated basis:

HC221, Parent Only Perpetual Preferred Stock: Cumulative;

HC222, Parent Only Perpetual Preferred Stock: Noncumulative;

HC223, Parent Only Common Stock: Par Value;

HC224, Parent Only Common Stock: Paid in Excess of Par;

HC225, Parent Only Accumulated Other Comprehensive Income: Unrealized Gains (Losses) on Available-for-Sale Securities;

HC226, Parent Only Accumulated Other Comprehensive Income: Gains (Losses) on Cash Flow Hedges;

HC227, Parent Only Accumulated Other Comprehensive Income: Other;

HC228, Parent Only Retained Earnings;

HC229, Parent Only Other Components of Equity Capital;

HC301, Parent Only Cash, Deposits, and Investment Securities;

HC505, Parent Only Interest Income;

HC509, Parent Only Total Income;

HC570, Parent Only Total Expense;

HC571, Parent Only Total Income Taxes;

HC575, Parent Only Dividends Paid;

HC601, Consolidated Cash, Deposits, and Investment Securities;

HC621, Consolidated Perpetual Preferred Stock: Cumulative;

HC622, Consolidated Perpetual Preferred Stock: Noncumulative;

HC623, Consolidated Common Stock: Par Value;

HC624, Consolidated Common Stock: Paid in Excess of Par;

HC625, Consolidated Accumulated Other Comprehensive Income: Unrealized Gains (Losses) on Available-for-Sale Securities;

HC626, Consolidated Accumulated Other Comprehensive Income: Gains (Losses) on Cash Flow Hedges;

HC627, Consolidated Accumulated Other Comprehensive Income: Other;

HC628, Consolidated Only Retained Earnings;

HC629, Consolidated Only Other Components of Equity Capital.

HC705, Consolidated Interest Income;

HC709, Consolidated Total Income;

HC770, Consolidated Total Expense;

HC771, Consolidated Total Income Taxes; and

HC775, Consolidated Dividends Paid.

OTS believes these new line items will provide additional detail on thrift holding companies. With these new data items, OTS will be better able to monitor the risk profiles of thrift holding companies.

13. New Codes for Schedule CMR

OTS proposes to add a series of six new codes to Schedule CMR to provide additional reporting detail on collateralized debt obligations (CDOs), collateralized loan obligations (CLOs), and commercial mortgage-backed securities (CMBSs):

Collateralized Debt Obligations: Carrying Value;

Collateralized Debt Obligations: Market Value;

Collateralized Loan Obligations: Carrying Value;

Collateralized Loan Obligations: Market Value;

Commercial Mortgage-Backed Securities: Carrying Value; and

Commercial Mortgage-Backed Securities: Market Value.

CDOs are a type of asset-backed security and structured credit product. CDOs are constructed from a portfolio of fixed-income assets that are pooled together and passed on to different classes of owners.

CLOs are a type of asset-backed security and structured credit product. CLOs are structured from a portfolio of nonmortgage business loans that are pooled together and passed on to different classes of owners.

CMBSs are a type of asset-backed security and structured credit product. CMBSs are structured from a portfolio of commercial mortgage loans that are pooled together and passed on to different classes of owners.

IV. Discussion of Revisions Proposed for December 2009

A. Burden-Reducing Revision

1. Eliminating Schedule CSS—Subordinate Organization Schedule

OTS proposes to eliminate Schedule CSS from the TFR. Twenty-three line items are presently collected annually as of December 31, for each and every required subordinate organization owned directly or indirectly by the savings association. OTS believes these data can be collected independently of the TFR reporting system during the normal onsite or offsite examination process. In the most recent Schedule CSS filing for the reporting period ending December 31, 2007, 337 thrifts reported data for 666 subsidiary organizations and 492 thrifts reported no Schedule CSS data.

B. New Items

1. Schedule FV—Consolidated Assets and Liabilities Measured at Fair Value on a Recurring Basis

Effective for the March 31, 2007, report date, OTS began collecting information on certain assets and liabilities measured at fair value in Schedule SI. The data collected on Schedule SI is intended to be consistent with the fair value disclosures and other requirements in FASB Statement No. 157, *Fair Value Measurements* (FAS 157).

Based on the OTS's ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of items at fair value on Schedule SI, OTS is proposing to expand the data collected from thrifts with total assets greater than $10 billion.

To improve the consistency of data collected with the FAS 157 disclosure requirements and industry disclosure practices, OTS is proposing to add a new Schedule FV for thrifts with total assets greater than $10 billion to the TFR to expand the detail of fair value data collected on Schedule SI in a manner consistent with the asset and liability breakdowns on Schedule RC, Balance Sheet, as proposed by the banking agencies for the Call Report.

OTS has determined that the proposed information is necessary to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes at the largest thrifts. The collection of the information as proposed will facilitate and enhance OTS's ability to monitor the extent of fair value accounting in thrifts' Reports of Condition pursuant to the disclosure requirements of FAS 157. The information to be collected is consistent with the disclosures required by FAS 157 and consistent with industry practice for reporting fair value measurements and should, therefore, not impose significant incremental burden on thrifts with total assets greater than $10 billion. The following 75 new line items are proposed for Schedule FV:

FV110, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Total Fair Value Reported;

FV111, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Amounts Netted in the Determination of Fair Value;

FV112, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 1 Fair Value Measurements;

FV113, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 2 Fair Value Measurements;

FV114, Federal Funds Sold and Securities Purchased Under Agreements to Resell—Level 3 Fair Value Measurements;

FV120, Trading Securities—Total Fair Value Reported;

FV121, Trading Securities—Amounts Netted in the Determination of Fair Value;

FV122, Trading Securities—Level 1 Fair Value Measurements;

FV123, Trading Securities—Level 2 Fair Value Measurements;

FV124, Trading Securities—Level 3 Fair Value Measurements;

FV130, Available-for-Sale Securities—Total Fair Value Reported;

FV131, Available-for-Sale Securities—Amounts Netted in the Determination of Fair Value;

FV132, Available-for-Sale Securities—Level 1 Fair Value Measurements;

FV133, Available-for-Sale Securities—Level 2 Fair Value Measurements;

FV134, Available-for-Sale Securities—Level 3 Fair Value Measurements;

FV210, Loans and Leases—Total Fair Value Reported;

FV211, Loans and Leases—Amounts Netted in the Determination of Fair Value;

FV212, Loans and Leases—Level 1 Fair Value Measurements;

FV213, Loans and Leases—Level 2 Fair Value Measurements;

FV214, Loans and Leases—Level 3 Fair Value Measurements;

FV240, Mortgage Servicing Rights—Total Fair Value Reported;

FV241, Mortgage Servicing Rights—Amounts Netted in the Determination of Fair Value;

FV242, Mortgage Servicing Rights—Level 1 Fair Value Measurements;

FV243, Mortgage Servicing Rights—Level 2 Fair Value Measurements;

FV244, Mortgage Servicing Rights—Level 3 Fair Value Measurements;

FV250, Derivative Assets—Total Fair Value Reported;

FV251, Derivative Assets—Amounts Netted in the Determination of Fair Value;

FV252, Derivative Assets—Level 1 Fair Value Measurements;

FV253, Derivative Assets—Level 2 Fair Value Measurements;

FV254, Derivative Assets—Level 3 Fair Value Measurements;

FV310, All Other Financial Assets—Total Fair Value Reported;

FV311, All Other Financial Assets—Amounts Netted in the Determination of Fair Value;

FV312, All Other Financial Assets—Level 1 Fair Value Measurements;

FV313, All Other Financial Assets—Level 2 Fair Value Measurements;

FV314, All Other Financial Assets—Level 3 Fair Value Measurements;

FV360, Total Assets Measured at Fair Value on a Recurring Basis—Total Fair Value Reported;

FV361, Total Assets Measured at Fair Value on a Recurring Basis—Amounts Netted in the Determination of Fair Value;

FV362, Total Assets Measured at Fair Value on a Recurring Basis—Level 1 Fair Value Measurements;

FV363, Total Assets Measured at Fair Value on a Recurring Basis—Level 2 Fair Value Measurements;

FV364, Total Assets Measured at Fair Value on a Recurring Basis—Level 3 Fair Value Measurements;

FV410, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Total Fair Value Reported;

FV411, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Amounts Netted in the Determination of Fair Value;

FV412, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 1 Fair Value Measurements;

FV413, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 2 Fair Value Measurements;

FV414, Federal Funds Purchased and Securities Sold Under Agreements to Repurchase—Level 3 Fair Value Measurements;

FV420, Deposits—Total Fair Value Reported;

FV421, Deposits—Amounts Netted in the Determination of Fair Value;

FV422, Deposits—Level 1 Fair Value Measurements;

FV423, Deposits—Level 2 Fair Value Measurements;

FV424, Deposits—Level 3 Fair Value Measurements;

FV440, Subordinated Debentures—Total Fair Value Reported;

FV441, Subordinated Debentures—Amounts Netted in the Determination of Fair Value;

FV442, Subordinated Debentures—Level 1 Fair Value Measurements;

FV443, Subordinated Debentures—Level 2 Fair Value Measurements;

FV444, Subordinated Debentures—Level 3 Fair Value Measurements;

FV460, Other Borrowings—Total Fair Value Reported;

FV461, Other Borrowings—Amounts Netted in the Determination of Fair Value;

FV462, Other Borrowings—Level 1 Fair Value Measurements;

FV463, Other Borrowings—Level 2 Fair Value Measurements;

FV464, Other Borrowings—Level 3 Fair Value Measurements;

FV470, Derivative Liabilities—Total Fair Value Reported;

FV471, Derivative Liabilities—Amounts Netted in the Determination of Fair Value;

FV472, Derivative Liabilities—Level 1 Fair Value Measurements;

FV473, Derivative Liabilities—Level 2 Fair Value Measurements;

FV474, Derivative Liabilities—Level 3 Fair Value Measurements;

FV490, All Other Financial Liabilities—Total Fair Value Reported;

FV491, All Other Financial Liabilities—Amounts Netted in the Determination of Fair Value;

FV492, All Other Financial Liabilities—Level 1 Fair Value Measurements;

FV493, All Other Financial Liabilities—Level 2 Fair Value Measurements;

FV494, All Other Financial Liabilities—Level 3 Fair Value Measurements;

FV510, Total Liabilities Measured at Fair Value on a Recurring Basis—Total Fair Value Reported;

FV511, Total Liabilities Measured at Fair Value on a Recurring Basis—Amounts Netted in the Determination of Fair Value;

FV512, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 1 Fair Value Measurements;

FV513, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 2 Fair Value Measurements; and

FV514, Total Liabilities Measured at Fair Value on a Recurring Basis—Level 3 Fair Value Measurements.

2. Fiduciary and Related Services Data

The revisions to Schedule FS include breaking out foundations and endowments as well as investment advisory agency accounts as separate types of fiduciary accounts in the schedule's sections for reporting fiduciary and related assets and income; adding items for Individual Retirement Accounts and similar accounts included in fiduciary and related assets; expanding the breakdown of managed assets by type of asset to cover all types of fiduciary accounts; adding new asset types in the breakdown of managed assets by type of asset; revising the manner in which discretionary investments in common trust funds and collective investment funds are reported in the breakdown of managed assets by type of asset; adding items for the market value of discretionary investments in proprietary mutual funds and the number of managed accounts holding such investments; and adding items for the number and principal amount outstanding of debt issues in substantive default for which the institution serves as indenture trustee.

The following 14 line items would be revised in Schedule FS:

Revising the caption for line FS260 from ''Investment Management Agency Accounts—Amount of Managed Assets'' to ''Investment Management and Investment Advisory Accounts—Amount of Managed Assets'';

Revising the caption for line FS262 from ''Investment Management Agency Accounts—Number of Managed Accounts'' to ''Investment Management and Investment Advisory Accounts—Number of Managed Accounts'';

Revising the caption for line FS360 from ''Investment Management Agency Accounts'' to ''Investment Management & Investment Advisory Accounts'';

Revising line FS410 to Noninterest-Bearing Deposits—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS415 to Interest-Bearing Deposits—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS420 to U.S. Treasury and U.S. Government Agency Obligations—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS425 to State, County, and Municipal Obligations—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS430 to Common Trust Funds and Collective Investment Funds—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS435 to Mutual Funds—Equity—Employee Benefit and Other Individual Retirement Accounts;

Revising line FS440 to Mutual Funds—Money Market—All Other Accounts;

Revising line FS445 to Mutual Funds—Other—Total;

Revising line FS450 to Short-Term Obligations—Personal Trust and Agency, Investment Management Agency Accounts;

Revising line FS455 to Other Notes and Bonds—Personal Trust and Agency, Investment Management Agency Accounts; and

Revising line FS460 to Common and Preferred Stocks—Personal Trust and Agency, Investment Management Agency Accounts.

The following 68 line items would be added to Schedule FS:

FS234, IRAs, HSAs, and Similar Accounts—Amount of Managed Assets;

FS235, IRAs, HSAs, and Similar Accounts—Amount of Nonmanaged Assets;

FS236, IRAs, HSAs, and Similar Accounts—Number of Managed Accounts;

FS237, IRAs, HSAs, and Similar Accounts—Number of Nonmanaged Accounts;

FS261, Investment Management and Investment Advisory Accounts—Amount of Nonmanaged Assets;

FS263, Investment Management and Investment Advisory Accounts—Number of Nonmanaged Accounts;

FS264, Foundations and Endowments—Amount of Managed Assets;

FS265, Foundations and Endowments—Amount of Nonmanaged Assets;
FS266, Foundations and Endowments—Number of Managed Accounts;
FS267, Foundations and Endowments—Number of Nonmanaged Accounts;
FS335, Fiduciary and Related Services Income—IRAs, HSAs, and Similar Accounts;
FS411, Noninterest-Bearing Deposits—Employee Benefit and Other Individual Retirement Accounts;
FS412, Noninterest-Bearing Deposits—All Other Accounts;
FS413, Noninterest-Bearing Deposits—Total;
FS416, Interest-Bearing Deposits—Employee Benefit and Other Individual Retirement Accounts;
FS417, Interest-Bearing Deposits—All Other Accounts;
FS418, Interest-Bearing Deposits—Total;
FS421, U.S. Treasury and U.S. Government Agency Obligations—Employee Benefit and Other Individual Retirement Accounts;
FS422, U.S. Treasury and U.S. Government Agency Obligations—All Other Accounts;
FS423, U.S. Treasury and U.S. Government Agency Obligations—Total;
FS426, State, County, and Municipal Obligations—Employee Benefit and Other Individual Retirement Accounts;
FS427, State, County, and Municipal Obligations—All Other Accounts;
FS428, State, County, and Municipal Obligations—Total;
FS431, Common Trust Funds and Collective Investment Funds—Employee Benefit and Other Individual Retirement Accounts;
FS432, Common Trust Funds and Collective Investment Funds—All Other Accounts;
FS433, Common Trust Funds and Collective Investment Funds—Total;
FS434, Mutual Funds—Equity—Personal Trust and Agency, Investment Management Agency Accounts;
FS436, Mutual Funds—Equity—All Other Accounts;
FS437, Mutual Funds—Equity—Total;
FS438, Mutual Funds—Money Market—Personal Trust and Agency, Investment Management Agency Accounts;
FS439, Mutual Funds—Money Market—Employee Benefit and Other Individual Retirement Accounts;
FS441, Mutual Funds—Money Market—Total;
FS442, Mutual Funds—Other—Personal Trust and Agency, Investment Management Agency Accounts;
FS443, Mutual Funds—Other—Employee Benefit and Other Individual Retirement Accounts;
FS444, Mutual Funds—Other—All Other Accounts;
FS451, Short-Term Obligations—Employee Benefit and Other Individual Retirement Accounts;
FS452, Short-Term Obligations—All Other Accounts;
FS453, Short-Term Obligations—Total;
FS456, Other Notes and Bonds—Employee Benefit and Other Individual Retirement Accounts;
FS457, Other Notes and Bonds—All Other Accounts;
FS458, Other Notes and Bonds—Total;
FS461, Common and Preferred Stocks—Employee Benefit and Other Individual Retirement Accounts;
FS462, Common and Preferred Stocks—All Other Accounts;
FS463, Common and Preferred Stocks—Total;
FS465, Real Estate Mortgages—Personal Trust and Agency, Investment Management Agency Accounts;
FS466, Real Estate Mortgages—Employee Benefit and Other Individual Retirement Accounts;
FS467, Real Estate Mortgages—All Other Accounts;
FS468, Real Estate Mortgages—Total;
FS470, Real Estate—Personal Trust and Agency, Investment Management Agency Accounts;
FS471, Real Estate—Employee Benefit and Other Individual Retirement Accounts;
FS472, Real Estate—All Other Accounts;
FS473, Real Estate—Total;
FS475, Miscellaneous Assets—Personal Trust and Agency, Investment Management Agency Accounts;
FS476, Miscellaneous Assets—Employee Benefit and Other Individual Retirement Accounts;
FS477, Miscellaneous Assets—All Other Accounts;
FS478, Miscellaneous Assets—Total;
FS480, Investments in Unregistered Funds and Private Equity Investments—Personal Trust and Agency, Investment Management Agency Accounts;
FS481, Investments in Unregistered Funds and Private Equity Investments—Employee Benefit and Other Individual Retirement Accounts;
FS482, Investments in Unregistered Funds and Private Equity Investments—All Other Accounts;
FS483, Investments in Unregistered Funds and Private Equity Investments—Total;
FS490, Total Managed Assets—Personal Trust and Agency, Investment Management Agency Accounts;
FS491, Total Managed Assets—Employee Benefit and Other Individual Retirement Accounts;
FS492, Total Managed Assets—All Other Accounts;
FS493, Total Managed Assets—Total;
FS495, Investments of Managed Fiduciary Accounts in Advised or Sponsored Mutual Funds—Market Value of Discretionary Investments in Proprietary Mutual Funds;
FS496, Investments of Managed Fiduciary Accounts in Advised or Sponsored Mutual Funds—Number of Managed Assets Holding Investments in Proprietary Mutual Funds;
FS516, Corporate and Municipal Trusteeships—Issues Reported in FS520 and FS515 that are in Default—Number of Issues; and
FS517, Corporate and Municipal Trusteeships—Issues Reported in FS520 and FS515 that are in Default—Principal Amount Outstanding.

Request for Comments:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number.

In this notice, OTS is soliciting comments concerning the following information collection.

Statutory Requirement: 12 U.S.C. 1464(v) imposes reporting requirements for savings associations.

Type of Review: Revision of currently approved collections.

Affected Public: Business or For Profit.

Estimated Number of Respondents and Recordkeepers: 829.

Estimated Burden Hours per Respondent: 37.0 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Frequency of Response: Quarterly.

Estimated Total Annual Burden: 191,098 hours.

OTS is proposing to revise the TFR, which is currently an approved collection of information, on a phased-in basis over 2009. The effect on reporting burden of the proposed revisions to the TFR requirements will vary from institution to institution depending on the institution's asset size and its involvement with the types of activities or transactions to which the proposed changes apply.

The proposed TFR changes that would take effect as of March 31, 2009, would eliminate one line item, revise the captions for seven existing items, add four new items, and eliminate

confidential treatment of fiduciary income, expense, and loss data in Schedule FS and data in Schedule HC.

The proposed TFR changes that would take effect as of June 30, 2009, would eliminate two existing items, revise two existing items, add 77 new items, add six new reporting codes in Schedule CMR, and add four new questions to Schedule SI on whether a thrift is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the thrift exercises trust powers.

The proposed TFR revisions that would take effect December 31, 2009, would eliminate the entire Schedule CSS from the TFR, would add 75 new line items for assets and liabilities measured at fair value on a recurring basis in a new Schedule FV—Consolidated Assets and Liabilities Measured at Fair Value on a Recurring Basis for thrifts with total assets greater than $10 billion, and would revise Schedule FS—Fiduciary and Related Services by revising 14 existing line items and adding 68 new line items.

OTS estimates that the implementation of these reporting revisions will result in an increase in the current reporting burden imposed by the TFR on all savings associations.

As part of the approval process, we invite comments addressing one or more of the following points:

a. Whether the proposed revisions to the TFR collections of information are necessary for the proper performance of the agency's functions, including whether the information has 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 information collections on respondents, including through the use of automated collection techniques, the Internet, 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.

OTS will summarize the comments received and include them in the request for OMB approval. All comments will become a matter of public record.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Desk Officer for OTS, FAX: (202) 395–6974, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503.

Dated: September 24, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–22988 Filed 9–30–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Savings and Loan Holding Company Registration Statement—H–(b)10

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before December 1, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Lane Langford (202) 906–7027, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings and Loan Holding Company Registration Statement—H(b)10.

OMB Number: 1550–0020.

Form Numbers: H–(b)10.

Regulation requirement: 12 CFR Part 584.

Description: The Statement is used to collect information concerning the acquisition, as well as any changes to intercompany relationships of the savings and loan holding company and its subsidiaries since submission of the holding company acquisition application.

OTS reviews the Statement for adequacy of answers to items and completeness in all material respects. In particular, OTS reviews each Statement to determine whether there has been adequate disclosure of pertinent facts. The Statement provides factual information concerning the date of consummation of transactions and the number of shares acquired whereas estimates of such information are provided in the application. In addition, a requirement is contained in the Statement concerning changes to information filed during the application process.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 65.

Estimated Number of Responses: 65.

Estimated Frequency of Response: Other; Once, on becoming an S & L holding company.

Estimated Total Burden: 520 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: September 25, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–22984 Filed 9–30–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient DRG and SNF Medical Services; 2009; Fiscal Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Section 17.101 of Title 38 of the Code of Federal Regulations sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations include methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility (SNF) charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. The regulations also provide that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published in a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp,* under ''Charge Data.'' Certain of these charges are hereby updated as described in the Supplementary Information section of this notice. These changes are effective October 1, 2008.

When charges for medical care or services provided or furnished at VA expense by either VA or non-VA providers have not been established under other provisions of the regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0361. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Of the charge types listed in the Summary section of this notice, only the acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges are being changed. Charges for the following charge types: partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes are not being changed. These Outpatient facility charges and Professional charges remain the same as set forth in a notice published in the **Federal Register** on December 26, 2007 (72 FR 246).

Based on the methodologies set forth in 38 CFR 17.101(b), this document provides an update to acute inpatient charges that were based on 2008 diagnosis related group (DRG). Acute inpatient facility charges by DRG are set forth in Table A in the September 28, 2007, **Federal Register** notice (72 FR 188). Table A in this notice provides updated charges based on 2009 DRGs and will replace Table A in the September 28, 2007, notice.

Also, this document provides for an updated all-inclusive per diem charge for skilled nursing facility/sub-acute inpatient facility charge using the methodologies set forth in 38 CFR 17.101(c) and it is adjusted by a geographic area factor based on the location where the care is provided. The skilled nursing facility/sub-acute inpatient facility per diem charge is set forth in Table B in the September 28, 2007, **Federal Register** notice. Table B in this notice provides the updated all-inclusive nationwide skilled nursing facility/sub-acute inpatient facility per diem charge and will replace Table B in the September 28, 2007, notice.

The charges in this update for acute inpatient facility and skilled nursing facility/sub-acute inpatient facility services are effective October 1, 2008.

In this update, we are retaining the table designations used for acute inpatient facility charges by DRGs in the notice published in the **Federal Register** on September 28, 2007. We also are retaining the table designation used for skilled nursing facility/sub-acute inpatient facility charges in the notice published in the **Federal Register** on September 28, 2007. Accordingly, the tables identified as being updated by this notice correspond to the applicable tables published in the September 28, 2007, notice, beginning with Table A through Table B.

We have updated the list of data sources presented in Supplementary Table 1 to reflect the updated data sources used to establish the updated charges described in this notice.

We have also updated the list of VA medical facility locations. As a reminder, in Supplementary Table 3 posted on the internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp,* we set forth the list of VA medical facility locations, which includes the first three-digits of their ZIP Codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rates/index.asp,* under ''Charge Data.''

Approved: August 28, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–22787 Filed 9–30–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
October 1, 2008

Part II

The President

Proclamation 8294—To Implement Amendments to the Burmese Freedom and Democracy Act of 2003

Executive Order 137474—Amendments to Executive Order 12962

Federal Register
Vol. 73, No. 191
Wednesday, October 1, 2008

Presidential Documents

Title 3—

The President

Proclamation 8294

To Implement Amendments to the Burmese Freedom and Democracy Act of 2003

By the President of the United States of America

A Proclamation

1. Section 3A(b)(1) of the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61) (the ''Burmese Freedom and Democracy Act''), as amended by section 6(a) of the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110–286) (the ''JADE Act''), directs the President to prohibit the importation of jadeite and rubies mined or extracted from Burma, as well as the importation of articles of jewelry containing jadeite and rubies mined or extracted from Burma (Burmese covered articles), until such time as the President determines and certifies to the appropriate congressional committees that Burma has met the conditions described in section 3(a)(3) of the Burmese Freedom and Democracy Act.

2. Sections 3A(c)(1) and 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended, set forth certain conditions for the importation of jadeite and rubies mined or extracted from countries other than Burma, as well as for the importation of articles of jewelry containing jadeite and rubies mined or extracted from countries other than Burma (non-Burmese covered articles).

3. Section 3A(c)(2) of the Act, as amended, also permits the President to waive the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country with respect to which the President determines and certifies to the appropriate congressional committees that the country has implemented certain measures to prevent the trade in Burmese covered articles. 4. In order to implement the prohibitions on the importation of Burmese covered articles and the conditions for importation of non-Burmese covered articles set forth in sections 3A(b)(1), 3A(c)(1), and 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS) to include an additional U.S. Note to chapter 71.

5. Section 604 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

6. Sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, authorize the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to implement the prohibition on Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act.

7. I have determined that it is appropriate to authorize the Secretary of the Treasury and the Secretary of Homeland Security, pursuant to sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, to issue regulations, licenses, and orders, and conduct such investigations

as may be necessary, to implement the prohibition on importation of Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act. I further determine that it is appropriate to authorize the Secretary of the Treasury and the Secretary of Homeland Security to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

8. I have determined that it is appropriate to authorize the Secretary of the Treasury, in consultation with the Secretary of State, to perform the functions set forth in section 3A(c)(2)(A) of the Burmese Freedom and Democracy Act, as amended, relating to the issuance waivers of the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country that has implemented certain measures to prevent the trade in Burmese covered articles. I further determine that it is appropriate to authorize the Secretary of the Treasury to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

9. Section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended, directs the President to take all appropriate actions to seek issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization (WTO) granting a waiver of the applicable WTO obligations with respect to the provisions of section 3A of the Burmese Freedom and Democracy Act, as amended, and any measures taken to implement it.

10. I have determined that it is appropriate to authorize the United States Trade Representative to perform the functions specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended.

11. Section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended, directs the President to take all appropriate actions to seek the adoption of a resolution by the United Nations General Assembly expressing the need to address trade in Burmese covered articles and calling for the creation and implementation of a workable certification scheme for non-Burmese covered articles to prevent the trade in Burmese covered articles.

12. I have determined that it is appropriate to authorize the Secretary of State to perform the functions specified in section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended.

13. Section 3A(g) of the Burmese Freedom and Democracy Act, as amended, directs the President to, not later than January 26, 2009, transmit to the appropriate congressional committees a report describing what actions the United States has taken during the 60-day period beginning on the date of the enactment of the JADE Act to seek (i) the issuance of a draft waiver decision by the Council for Trade in Goods of the WTO, as specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended; (ii) the adoption of a resolution by the United Nations General Assembly, as specified in section 3A(b)(3)(B) of that Act; and (iii) the negotiation of an international arrangement, as specified in section 3A(f)(1) of that Act.

14. I have determined that it is appropriate to authorize the Secretary of State, in consultation with the United States Trade Representative, to perform the functions specified in section 3A(g) of the Burmese Freedom and Democracy Act, as amended.

15. Under section 3(b) of the Burmese Freedom and Democracy Act, as amended by section 6(c) of the JADE Act, the President may waive the restrictions described above if the President determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, Foreign Affairs, and Ways and Means of the House of Representatives that to do so is in the national interest of the United States.

16. I have determined that it is appropriate to authorize the Secretary of State to perform the functions and authorities specified in section 3(b) of the Burmese Freedom and Democracy Act, as amended.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 3 and 3A of the Burmese Freedom and Democracy Act, as amended by section 6 of the JADE Act, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to implement the prohibition on the importation of Burmese covered articles and the conditions for the importation of non-Burmese covered articles provided for in sections 3A(b)(1) and 3A(c)(1) of the Burmese Freedom and Democracy Act, as amended, an additional U.S. Note as set forth in the Annex to this proclamation is included in chapter 71 of the HTS.

(2) Beginning on September 27, 2008, the importation into the United States of any Burmese covered article shall be prohibited, except as provided for (i) in section 3A(d) of the Burmese Freedom and Democracy Act, as amended; (ii) in regulations, orders, directives, or licenses that may be issued pursuant to this proclamation and section 3A(b)(2) of the Burmese Freedom and Democracy Act, as amended; or (iii) by waiver issued pursuant to section 3(b) of the Burmese Freedom and Democracy Act, as amended.

(3) Beginning on September 27, 2008, as a condition for the importation into the United States of any non-Burmese covered article, the importer and exporter of such article must meet the conditions set forth in section 3A(c)(1) of the Burmese Freedom and Democracy Act, as amended, except as provided for (i) in section 3A(d) of that Act; (ii) in regulations, orders, directives, or licenses issued pursuant to this proclamation and section 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended; or (iii) by waiver issued pursuant to either section 3(b) or section 3A(c)(2) of the Burmese Freedom and Democracy Act, as amended.

(4) The Secretary of the Treasury and the Secretary of Homeland Security are hereby authorized, pursuant to sections 3A(b)(2) and 3A(c)(3) of the Burmese Freedom and Democracy Act, as amended, to issue regulations, licenses, and orders, and conduct such investigations as may be necessary, to implement the prohibition on Burmese covered articles set forth in section 3A(b)(1) of that Act and the conditions for importation of non-Burmese covered articles set forth in sections 3A(c)(1) and 3A(c)(2) of that Act. The Secretary of the Treasury and the Secretary of Homeland Security are further authorized to redelegate, as necessary, any of these functions to other officers and agencies of the United States Government consistent with applicable law.

(5) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to perform the functions set forth in section 3A(c)(2)(A) of the Burmese Freedom and Democracy Act, as amended, relating to the issuance of waivers of the conditions for importation set forth in section 3A(c)(1) of non-Burmese covered articles from any country that has implemented certain measures to prevent the trade in Burmese covered articles. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

(6) The United States Trade Representative is hereby authorized to perform the functions specified in section 3A(b)(3)(A) of the Burmese Freedom and Democracy Act, as amended.

(7) The Secretary of State is hereby authorized to perform the functions specified in section 3A(b)(3)(B) of the Burmese Freedom and Democracy Act, as amended.

(8) The Secretary of State is hereby authorized, in consultation with the United States Trade Representative, to perform the functions specified in section 3A(g) of the Burmese Freedom and Democracy Act, as amended.

(9) The Secretary of State is hereby authorized to perform the functions specified in section 3(b) of the Burmese Freedom and Democracy Act, as amended.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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

ANNEX

TO MODIFY CHAPTER 71 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 27, 2008, chapter 71 of the Harmonized Tariff Schedule is modified by inserting in numerical sequence the following new Additional U.S. Note:

"4. Prohibition on the importation of certain goods of Burma.

(a) Pursuant to section 3A of the Burmese Freedom and Democracy Act of 2003 (Public Law 108-61; 50 U.S.C. 1701 note), as amended by the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (Public Law 110-286), for purposes of goods provided for in headings 7103, 7113 and 7116, except as set forth in subdivisions (c) and (d) of this note, the importation of any of the following goods shall be prohibited--

(i) jadeite mined in or extracted from Burma and classifiable in heading 7103 of the tariff schedule,

(ii) rubies mined in or extracted from Burma and classifiable in heading 7103 of the tariff schedule,

(iii) articles of jewelry containing jadeite described in subdivision (a)(i) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule; and

(iv) articles of jewelry containing rubies described in subdivision a(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule.

With respect to goods entered or withdrawn from warehouse for consumption, on or after September 27, 2008, should an importer choose to enter any good under heading 7103, 7113 or 7116, the presentation of such entry shall be deemed to be a certification by the importer that any jadeite or rubies contained in such good were not mined in or extracted from Burma.

(b) Notwithstanding the deemed certification under subdivision (a) of this note, the importation of the following goods--

(i) jadeite mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,

(ii) rubies mined in or extracted from a country other than Burma and classifiable in heading 7103 of the tariff schedule,

(iii) articles of jewelry containing jadeite described in subdivision (b)(i) or rubies described in subdivision (b)(ii) of this note, whether classifiable in heading 7113 or 7116 of the tariff schedule,

is not permitted unless such goods comply with the terms of any regulations issued by the Secretary of the Treasury to implement section 3A(c)(1) of the Burmese Freedom and Democracy Act of 2003, as amended, or are covered by any waiver or certification scheme that may be established pursuant to the provisions of sections 3(b) and 3A of Act, as amended.

(c) The provisions of this note shall not apply to Burmese covered articles and non-Burmese covered articles that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.

(d) The certification established under subdivision (a) of this note shall not apply to the importation of non-Burmese covered articles by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States, with a proper claim under subheading 9804.00.20, 9804.00.45 or other appropriate provision of chapter 98 of the tariff schedule."

[FR Doc. E8–23233

Filed 9–30–08; 8:45 am]

Billing code 3190–01–C

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Vol. 73, No. 191
Wednesday, October 1, 2008

Presidential Documents

Title 3—

The President

Executive Order 13474 of September 26, 2008

Amendments to Executive Order 12962

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is hereby ordered as follows:

Section 1. Executive Order 12962 of June 7, 1995, is hereby amended: (a) in the preamble, by striking ''and the Magnuson Fishery Conservation and Management Act (16 U.S.C 1801–1882)'' and inserting before '', and other pertinent statutes,'' the following:

''the National Marine Sanctuaries Act of 1972 (16 U.S.C. 1431 *et seq.*), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), the National Park Service Organic Act (16 U.S.C. 1 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*)''; and

(b) by redesignating subsections (d) through (i) in section 1 as subsections (e) through (j), respectively, and inserting after subsection (c) the following new subsection:

''(d) ensuring that recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments, national marine sanctuaries, marine protected areas, or any other relevant conservation or management areas or activities under any Federal authority, consistent with applicable law;''.

Sec. 2. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
September 26, 2008

[FR Doc. E8–23235
Filed 9–30–08; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
October 1, 2008

Part III

The President

Proclamation 8295—National Hunting and Fishing Day, 2008

Federal Register
Vol. 73, No. 191
Wednesday, October 1, 2008

Presidential Documents

Title 3—

The President

Proclamation 8295 of September 26, 2008

National Hunting and Fishing Day, 2008

By the President of the United States of America

A Proclamation

From our rugged peaks and mountains to our shining seas, our Nation is blessed with remarkable natural treasures. These magnificent landscapes are places where families and friends can create lasting memories and enjoy the outdoors. On National Hunting and Fishing Day, our country honors the many contributions of America's hunters and anglers, who add to our heritage and keep our wildlife populations healthy and strong.

Our Nation's sportsmen and women are among our foremost conservationists. They care deeply about our wildlife habitats, and they have contributed billions of dollars to wildlife restoration through the Pittman-Robertson Act, which is a levy on certain sporting goods. This investment has helped restore many species, including the American elk, black bear, and wild turkey. Through the Federal Waterfowl Stamp program, the conservation of habitats for migratory birds has been greatly improved. By protecting our Nation's wildlife, we can continue to advance the values of good stewardship.

My Administration has created, protected, and restored millions of acres of wetlands. Through my Ocean Action Plan, we are protecting fish populations and marine habitat. I was pleased to amend Executive Order 12962 to recognize the value of recreational fishing as a sustainable activity in Federal waters. We have also improved the health of millions of acres of forests under the Healthy Forests Restoration Act. This important legislation is helping to protect our public lands from the risk of catastrophic wildfires and contributes to a healthier environment for all Americans.

On this special day, we remember our responsibility to preserve the great American landscape for future generations, and we celebrate the joy of hunting and fishing in the great outdoors.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 27, 2008, as National Hunting and Fishing Day. I call upon the people of the United States to join me in recognizing the contributions of America's hunters and anglers, and all those who work to conserve our Nation's fish and wildlife resources.

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

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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