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Contents

Federal Register

Vol. 73, No. 194

Monday, October 6, 2008

Agriculture Department

See Forest Service

Architect of the Capitol

NOTICES

Proposed Small Business Set Aside Program, 58110

Army Department

See Engineers Corps

Board of Directors of the HOPE for Homeowners Program

RULES

HOPE for Homeowners Program:

Program Regulations, 58418–58426

Centers for Disease Control and Prevention

RULES

Medical Examination of Aliens; Revisions to Medical Screening Process, 58047–58058

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58245–58246

Family Violence Prevention Fund; Award Supplemental Grants, 58246

Mentoring Children of Prisoners; Replacement Grants Award, 58246

Mentoring of Children of Prisoners; 27 Expansion Supplements Awards, 58246–58247

National Latino Alliance for the Elimination of Domestic Violence; Award Supplemental Grants, 58247

Noncompetitive Successor Award to California Department of Public Health, 58247–58248

Coast Guard

PROPOSED RULES

Drawbridge Operation Regulations:

Intracoastal Waterway (ICW) Beach Thorofare, Atlantic City, NJ, 58070–58073

Commerce Department

See Economic Development Administration

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission

PROPOSED RULES

Labeling Requirement for Toy and Game Advertisements, 58063–58070

Copyright Office, Library of Congress

PROPOSED RULES

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 58073–58079

Defense Department

See Engineers Corps

NOTICES

36(b)(1) Arms Sales Notification, 58131–58212

Department of Defense Ammunition and Explosives Safety Standards; Revision of DoD 6055.09-STD, 58212

Meetings:

Defense Advisory Board for Employer Support of the Guard and Reserve, 58212–58213

Economic Development Administration

NOTICES

Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance, 58110–58111

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58214–58215

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58215–58216

Meetings:

National Coal Council, 58216

Engineers Corps

NOTICES

Environmental Impact Statements; Availability, etc.:

Permit Application for the Sanitation Districts of Los Angeles County's Clearwater Program in Los Angeles County, CA, 58213–58214

Environmental Protection Agency

RULES

Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule):

Revised Exceptional Event Data Flagging Submittal and Documentation Schedule to Support Initial Area Designations for the 2008 Ozone NAAQS, 58042–58047

PROPOSED RULES

Approval and Promulgation of Implementation Plans:

Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules; Extension of Comment Period, 58084–58085

North Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules; Extension of Comment Period, 58084

National Emission Standards for Hazardous Air Pollutants: Chemical Manufacturing Area Sources, 58352–58385

Requirements for Transboundary Shipments of Wastes Between OECD Countries, Requirements for Export Shipments of Spent Lead-Acid Batteries, etc., 58388–58416

Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule):

Revised Exceptional Event Data Submittal and Documentation Schedule for Monitoring Data Used in Designations for the 2008 Ozone NAAQS, 58080–58084

NOTICES

Beaches Environmental Assessment and Coastal Health Act; National List of Beaches, 58229–58230

Certain New Chemicals; Receipt and Status Information, 58230–58235

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES

Airworthiness Directives:

Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 Series Turboprop Engines; Correction, 58032–58033

NOTICES

Intent to Rule on Request to Release Airport Land: Nenana Airport, Nenana, AK, 58293–58294

Federal Deposit Insurance Corporation

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58235–58236

Federal Energy Regulatory Commission

NOTICES

Applications:

Magnum Gas Storage, LLC, 58216–58217

Mississippi 24 Hydro, LLC, 58217

Combined Notice of Filings, 58218–58223

Combine Notice of Filings, 58217–58218

Environmental Impact Statements; Availability, etc.:

Texas Gas Transmission, LLC; Fayetteville Shale

Compression Project, 58223–58225

TransCanada PipeLine USA, Ltd., et al.; Pathfinder

Pipeline Project and Bison Pipeline Project, 58225–58228

Filings:

Swisher, Keith L., 58228

Records Governing Off-the Record Communications, 58228–58229

Federal Highway Administration

NOTICES

Buy America Waiver Notification, 58294–58295

Federal Reserve System

RULES

Rules of Practice for Hearings, 58031–58032

NOTICES

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 58236–58237

Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities, 58237

Federal Trade Commission

NOTICES

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules, 58237–58239

Fish and Wildlife Service

NOTICES

Draft Revised Comprehensive Conservation Plan and Environmental Assessment:

Koyukuk/Nowitna National Wildlife Refuges, Galena, AK, 58259–58261

Endangered and Threatened Wildlife and Plants:

5-Year Reviews of Three Wildlife Species and Eight Plant Species in the Mountain-Prairie Region, 58261–58262

Proposed Willamette Valley Native Prairie Habitat Programmatic Safe Harbor Agreement:

Fenders Blue Butterfly in Benton, Lane, Linn, Marion, Polk, and Yamhill Counties, OR, 58263–58264

Food and Drug Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58248

Forest Service

NOTICES

Meetings:

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee, 58110

Health and Human Services Department

See Centers for Disease Control and Prevention

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

NOTICES

Declaration under the Public Readiness and Emergency Preparedness Act October 1, 2008, 58239–58242

Determination and Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information, 58242–58243

Meetings:

National Committee on Vital and Health Statistics, 58243–58244

Secretary's Advisory Committee on Re-designation of Head Start Grantees, 58244–58245

Homeland Security Department

See Coast Guard

See U.S. Customs and Border Protection

Housing and Urban Development Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Moving to Work Demonstration, 58253–58254

Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance:

Redevelopment of Abandoned and Foreclosed Homes Grantees, 58330–58349

Privacy Act; Systems of Records, 58254–58259

Industry and Security Bureau

RULES

Revisions to the Export Administration Regulations based upon a Systematic Review of the CCL, 58033–58041

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See National Park Service

See Reclamation Bureau

International Trade Administration

NOTICES

Antidumping Duty Order:

Steel Wire Garment Hangers from the People's Republic of China, 58111–58112

Environmental Technologies Trade Advisory Committee, Request for Nominations, 58112–58113

Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews:

Wooden Bedroom Furniture from the Peoples Republic of China, 58113

Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review:

Certain Tissue Paper Products from the Peoples Republic of China, 58113–58115

Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part:

Freshwater Crawfish Tail Meat From the People's Republic of China, 58115–58121

Preliminary Results of Countervailing Duty Administrative Review:

Lined Paper Products from India, 58121–58126

International Trade Commission

NOTICES

Investigation:

Welded Stainless Steel Pressure Pipe from China, 58265–58267

Justice Department

See Justice Programs Office

NOTICES

Consent Decree:

Merit Energy Company, LLC and Shell Exploration & Production Co., 58267

Justice Programs Office

NOTICES

Meetings:

Federal Advisory Committee on Juvenile Justice, 58267–58268

Land Management Bureau

NOTICES

Filing of Plat of Survey:

Louisiana, 58264

North Carolina, 58264

Library of Congress

See Copyright Office, Library of Congress

National Highway Traffic Safety Administration

NOTICES

Petition for Exemption from the Federal Motor Vehicle

Theft Prevention Standard:

Chrysler LLC, 58295–58297

National Institutes of Health

NOTICES

Meetings:

Center for Scientific Review, 58248–58250

Eunice Kennedy Shriver National Institute of Child Health and Human Development, 58250

National Cancer Institute, 58250–58251

National Institute of Allergy and Infectious Diseases, 58252

National Institute of Environmental Health Sciences, 58251–58252

National Institute of Mental Health, 58252–58253

National Institute of Mental Health; Amended, 58252–58253

National Institute on Drug Abuse, 58251

National Oceanic and Atmospheric Administration

RULES

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority, 58059–58061

Reef Fish Fishery of the Gulf of Mexico; Reopening of the 2008 Deepwater Grouper and Tilefish Commercial Fisheries, 58058–58059

Fisheries of the Exclusive Economic Zone Off Alaska:

Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska, 58061–58062

PROPOSED RULES

Atlantic Coastal Fisheries Cooperative Management Act Provisions:

American Lobster Fishery, 58099–58109

NOTICES

Indirect Cost Rates for the Office of National Marine Sanctuaries (Fiscal Year 2006), 58126–58127

Meetings:

Gulf of Mexico Fishery Management Council, 58127–58128

Pacific Fishery Management Council; Public Hearings, 58128–58129

Scientific Data Stewardship Project Office (2009), 58129–58131

National Park Service

NOTICES

Environmental Impact Statements; Availability, etc.:

Blackstone River Valley, MA and RI; Special Resource Study, 58264–58265

Curecanti National Recreation Area, CO; Resource Protection Study, 58265

Nuclear Regulatory Commission

PROPOSED RULES

Medical Use of Byproduct Material:

Amendments/Medical Event Definitions; Extension of Comment Period, 58063

NOTICES

Advisory Committee on Reactor Safeguards; Procedures for Meetings, 58268–58269

Issuance and Availability of Draft Regulatory Guide, DG-5026, and Cancellation of Public Meeting, 58269–58270

Meetings:

Advisory Committee on Reactor Safeguards;

Subcommittee on US-APWR, 58270

Personnel Management Office

RULES

Testimony by OPM Employees Relating to Official Information and Production of Official Records in Legal Proceedings, 58019–58023

Presidential Documents

PROCLAMATIONS

Special observances:

National Breast Cancer Awareness Month (Proc. 8297), 58427–58430

National Disability Employment Awareness Month (Proc. 8298), 58431–58432

National Domestic Violence Awareness Month (Proc. 8299), 58433–58434

Reclamation Bureau**PROPOSED RULES**

Bureau of Reclamation Loan Guarantees, 58085–58099

Securities and Exchange Commission**RULES**

Foreign Issuer Reporting Enhancements, 58300–58327

NOTICES

Applications:

H&Q Healthcare Investors, et al., 58271–58274

MCG Capital Corp., et al., 58274–58276

Meetings; Sunshine Act, 58276

Meetings; Sunshine Act; Cancellation, 58276–58277

Self-Regulatory Organizations; Proposed Rule Changes:

International Securities Exchange, LLC, 58277–58279

NASDAQ OMX PHLX, Inc., 58279–58281

NASDAQ Stock Market LLC, 58281–58283

New York Stock Exchange LLC, 58283–58285

NYSE Arca, Inc., 58285–58288

Small Business Administration**NOTICES**

Disaster Declarations:

Florida, 58288

Indiana, 58288–58289

Iowa, 58289

Mississippi, 58289–58290

Pennsylvania, 58290

Meetings:

Region II Buffalo District Advisory Council, 58290

Seeking Exemption Under Section 312 of the Small

Business Investment Act, Conflicts of Interest:

Emergence Capital Partners SBIC, L.P., 58291–58292

State Department**RULES**

Eritrea; Amendment to the International Arms Traffic in Arms Regulations, 58041–58042

NOTICES

Intent to Establish the Global AIDS Coordinator's Expert Panel on Prevention of Mother-to-Child Transmission of HIV, 58292

Performance Review Board Members, 58292

Surface Transportation Board**NOTICES**

Abandonment Exemption:

Buffalo & Pittsburgh Railroad, Inc.; Erie and Cattaraugus Counties, NY, 58297

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

NOTICES

Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws, 58292–58293

Treasury Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58297–58298

U.S. Customs and Border Protection**RULES**

Issuance of a Visa and Authorization for Temporary Admission into the United States for Certain Nonimmigrant Aliens Infected with HIV, 58023–58031

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58253

Separate Parts In This Issue**Part II**

Securities and Exchange Commission, 58300–58327

Part III

Housing and Urban Development Department, 58330–58349

Part IV

Environmental Protection Agency, 58352–58385

Part V

Environmental Protection Agency, 58388–58416

Part VI

Board of Directors of the HOPE for Homeowners Program, 58418–58426

Part VII

Executive Office of the President, Presidential Documents, 58427–58434

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

829758429
829858431
829958433

5 CFR

29558019

8 CFR

10058023
21258023

10 CFR**Proposed Rules:**

3558063

12 CFR

26358031

14 CFR

3958032

15 CFR

74258033
74458033
77458033

16 CFR**Proposed Rules:**

150058063

17 CFR

23058300
23958300
24058300
24958300

22 CFR

12658041

24 CFR

400158418

33 CFR**Proposed Rules:**

11758070

37 CFR**Proposed Rules:**

20158073

40 CFR

5058042

Proposed Rules:

5058080
5158080
52 (2 documents)58084
6358352
26258388
26458388
26558388
26658388
27158388

42 CFR

3458047

43 CFR**Proposed Rules:**

40358085

50 CFR

622 (2 documents)58058,
58059
67958061
69758059

Proposed Rules:

69758099

Rules and Regulations

Federal Register

Vol. 73, No. 194

Monday, October 6, 2008

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 295

RIN 3206-AL22

Testimony by OPM Employees Relating to Official Information and Production of Official Records in Legal Proceedings

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is adopting as final a proposed rule, with certain minor changes, that sets forth procedures that requesters have to follow when making demands on or requests to an OPM employee to produce official records and information, and provide testimony relating to official information, in connection with a legal proceeding in which OPM is not a party. This final rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. The rule, among other benefits, will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATE: Effective October 6, 2008.

FOR FURTHER INFORMATION CONTACT: R. Alan Miller, Associate General Counsel, U.S. Office of Personnel Management, Room 7353, 1900 E Street, NW., Washington, DC 20415 or by electronic mail at Richard.Miller@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Office of Personnel Management (OPM) occasionally receives subpoenas and requests for OPM employees to provide evidence in

litigation in which OPM is not a party. Often these subpoenas and requests are for OPM records that are not available to the public under the Freedom of Information Act. Also, OPM sometimes receives subpoenas and requests for OPM employees to appear as witnesses in litigation in conjunction with a request for nonpublic records. Requesters have sought information, for example, on retirement records, pay issues, and other program matters, under OPM jurisdiction. Responding to such demands and requests can result in a significant disruption to OPM employees' work schedules. The result is that employees may be diverted from performing their official duties in order to respond to requests from parties in litigation. In order to address this problem, many agencies over the years have issued regulations that are similar to this proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Such a regulation was sustained by the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

In *Touhy*, the Supreme Court held that a U.S. Department of Justice (DOJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a subpoena. The employee's refusal was based upon a DOJ regulation that prohibited disclosure of agency files, documents, records, or information without the express approval of the Attorney General. The Court sustained the validity of the DOJ regulations, reasoning that it was appropriate for the Attorney General to prescribe regulations not inconsistent with law for the custody, use and preservation of records, papers, and property pertaining to the Department of Justice.

On June 23, 2008, OPM published in the **Federal Register** its own proposed *Touhy* regulation, for codification in a new part 295 of 5 CFR (See 73 FR 35354) which provided for a 60-day public comment period. OPM received suggestions on the rule as proposed from one commenter, whose comments were directed to the penalties section [295.401] and to OPM's authority to regulate the conduct of former employees. As noted below in the summary of this final rule, we are not

adopting changes in this final rule from the rule as proposed based upon those comments because employees and former employees are already on notice of and subject to penalties for violating the precepts established herein. However, in order to clarify the application of this rule, OPM has decided to revise the proposed part heading to make express that it applies to testimony by OPM employees "relating to official information" (as opposed to private matters), as well as to the production of official records in legal proceedings. In addition, OPM has determined to add a reference to 31 U.S.C. 9701 to the new part 295 authority citation. This statute authorizes agencies to issue regulations providing for fair and cost-based fees and charges.

Briefly summarized, this final rule prohibits disclosure of nonpublic official records or testimony by OPM employees unless there is compliance with the rule (295.201 and 295.203). The rule identifies the factors that OPM will consider in making determinations in response to such requests and what information requesters must provide (295.202 and 295.203). On its own initiative, OPM has added "otherwise protected information" to the types of sensitive information enumerated in paragraph (i) of 295.202. The rule also specifies when the request should be submitted (295.203), the time period for review (295.205), potential fees (295.301), and, if a request is granted, any restrictions that may be placed on the disclosure of records or the appearance of an OPM employee as a witness (295.207 and 295.208). OPM is also adopting in this final rule two other changes on its own initiative. First, OPM is adding the phrase "when necessary" to the procedure provided in 295.209 for informing the court or other competent authority and seeking a stay when a decision is not made prior to the time a response is required. This modification from the section as proposed recognizes that at times there can be informal resolution of such matters short of seeking a stay. The second change is that OPM is adding the phrase "unless otherwise advised by the General Counsel" to the procedure provided in 295.210 for personal appearance of an OPM employee when a stay of a demand (or, as now added by OPM, a request) is denied. This

change likewise recognizes that such denials can sometimes be resolved instead by written response (see the section's last sentence) or otherwise.

The commenter generally objected to penalizing employees who fail to comply with this rule (295.401), upon the grounds that the language of subsection 401 would appear to penalize an employee, even if OPM did not have an opportunity to appear and be heard by the court in question. Additionally, the commenter questions penalizing employees who are trying to be helpful and provide responses to informal inquiries from outside parties that seek clarification. OPM is not changing the penalty section based upon these comments. First, the penalties section (295.401) does not impose penalties a priori. Rather, as with any potential disciplinary matter, it provides that employees may be subject to discipline for violation of the rule. Moreover, employees and former employees are already subject to the provisions of the statutes cited in the subsection. Additionally, the rule does not apply to mere informal requests for clarification. Instead, as set out in subsections 101 and 102, it applies to demands or requests for official records or information in a legal proceeding in which OPM is not a party, while recognizing that requests may be received informally. Moreover, as set out in subsections 209 and 210, an employee is given guidance as to how to respond if OPM has not had the opportunity to be heard by the court.

The charges for witnesses are the same as those provided by the Federal courts; and the fees related to production of records are the same as those charged under FOIA. The charges for time spent by an employee to prepare for testimony and for certification of records by OPM are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

This final rule applies to a broad range of matters in any legal proceeding in which OPM is not a named party. It also applies to former and current OPM employees (as well as OPM consultants and advisers). Former OPM employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the rule. They would not be barred from appearing to testify about general matters unconnected with the specific matters for which they had responsibility.

This final regulation will ensure a more efficient use of OPM resources,

minimize the possibility of involving OPM in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, and maintain the impartiality of OPM in matters that are in dispute between other parties. It will also serve OPM's interest in protecting sensitive, confidential, and privileged information and records that are generated in response to the requirements in the ethics laws and regulations.

This final OPM rule is internal (not branch-wide), and is essentially procedural, not substantive. It does not create a right to obtain official records or the official testimony of an OPM employee and it does not create any additional right or privilege not already available to OPM to deny any demand or request therefor. However, any failure to comply with the procedures in this rule would be a basis for denying a demand or request submitted to OPM.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6), this final rule will not have a significant economic impact on a substantial number of small entities. The final rule addresses only the procedures to be followed in the production or disclosure of OPM materials and information in litigation where OPM is not a party. Accordingly, OPM has determined that a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this final regulation, OPM has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action with the meaning of the Executive Order.

Executive Order 12988

As Acting Director of OPM, I have reviewed this final regulation in light of section 3 of Executive Order 12988,

Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final regulation does not contain information collection requirements that require approval by the Office of Management and Budget. OPM expects the collection of information that is called for by the final regulation would involve fewer than ten persons each year.

List of Subjects in 5 CFR Part 295

Administrative practice and procedures, Conflict of Interests, Courts, Government employees, Records, Subpoenas, Testimony.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, for the reasons set forth in the preamble, the U.S. Office of Personnel Management hereby adds a new part 295 to 5 CFR to read as follows:

PART 295—TESTIMONY BY OPM EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

295.101 Scope and purpose.

295.102 Applicability.

295.103 Definitions.

Subpart B—Requests for Testimony and Production of Documents

295.201 General prohibition

295.202 Factors OPM will consider.

295.203 Filing requirements for demands or requests for documents or testimony.

295.204 Service of subpoenas or requests.

295.205 Processing demands or requests.

295.206 Final determination.

295.207 Restrictions that apply to testimony.

295.208 Restrictions that apply to released records.

295.209 Procedure when a decision is not made prior to the time a response is required.

295.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

295.301 Fees.

Subpart D—Penalties

295.401 Penalties.

Authority: 5 U.S.C. App. (Sec. 1103, Civil Service Reform Act of 1978; 31 U.S.C. 9701).

Subpart A—General Provisions**§ 295.101 Scope and purpose.**

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the U.S. Office of Personnel Management (OPM) to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) OPM intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving OPM in controversial issues not related to our functions;

(3) Prevent the misuse of OPM employees as involuntary expert witnesses for private interests or as inappropriate expert witnesses as to the state of the law;

(4) Maintain OPM's impartiality among private litigants where neither OPM nor any other Federal entity is a named party; and

(5) Protect sensitive, confidential information and the deliberative processes of OPM.

(c) In providing for these requirements, OPM does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OPM. It does not create any right or benefits, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 295.102 Applicability.

This part applies to demands and requests to employees of OPM in legal proceedings in which OPM is not a named party, for factual or expert testimony relating to official information or for production of official records or information. However, it does not apply to:

(a) Demands upon or requests for a current OPM employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OPM;

(b) Demands upon or requests for a former OPM employee to testify as to matters in which the former employee was not directly or materially involved while at OPM;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552(a); and

(d) Congressional or Government Accountability Office (GAO) demands and requests for testimony or records.

§ 295.103 Definitions.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OPM employee that is issued in a legal proceeding.

General Counsel means the General Counsel of OPM or a person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OPM means the U.S. Office of Personnel Management.

OPM employee or employee means:

(1) Any current or former officer or employee of OPM;

(2) Any other individual hired through contractual agreement by or on behalf of the OPM or who has performed or is performing services under such an agreement for OPM; and

(3) Any individual who served or is serving in any consulting or advisory capacity to OPM, whether formal or informal.

(4) Provided, that this definition does not include persons who are no longer employed by OPM and who are retained or hired as expert witnesses or who agree to testify about general matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with OPM.

Records or official records and information mean:

(1) All documents and materials which are OPM agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in OPM files; and

(3) All other information or materials acquired by an OPM employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Requests for Testimony and Production of Documents**§ 295.201 General prohibition.**

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 295.202 Factors OPM will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to an appropriate demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) OPM has an interest in the decision that may be rendered in the legal proceeding;

(d) Allowing such testimony or production of records would assist or hinder OPM in performing its statutory duties or use OPM resources in a way that will interfere with the ability of OPM employees to do their regular work;

(e) Allowing such testimony or production of records would be in the best interest of OPM or the United States;

(f) The records or testimony can be obtained from other sources;

(g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(h) Disclosure would violate a statute, Executive order or regulation;

(i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or would otherwise be inappropriate for release;

(j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(k) Disclosure would result in OPM appearing to favor one private litigant over another private litigant;

(l) Disclosure relates to documents that were produced by another agency;

(m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it;

(o) The demand improperly seeks to compel an OPM employee to serve as an expert witness for a private interest;

(p) The demand improperly seeks to compel an OPM employee to testify as to a matter of law;

(q) The demand or request is sufficiently specific to be answered.

§ 295.203 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OPM employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the General Counsel. If you serve a subpoena on OPM or an OPM employee before submitting a written request and receiving a final determination, OPM will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved.

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OPM to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OPM employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will

require with each OPM employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of Personnel Management reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 295.204 Service of subpoenas or request.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

§ 295.205 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) OPM will process requests in the order in which they are received. Absent exigent or unusual circumstances, OPM will respond within 45 days from the date that we receive it. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OPM or the United States or for other good cause.

§ 295.206 Final determination.

The General Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the

demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an OPM employee.

§ 295.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of OPM employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) OPM may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the General Counsel determines such testimony would not be in the best interest of OPM or the United States; or

(3) For a current OPM employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OPM unless testimony is being given on behalf of the United States.

§ 295.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPM may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original OPM records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identify as official OPM records, and they are not to be

marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 295.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in Sec. 295.206, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 295.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

Subpart C—Schedule of Fees

§ 295.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OPM.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OPM in its Freedom of Information Act regulations at 5 CFR part 294.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the

location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must pay witness fees for current OPM employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former OPM employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* The U.S. Office of Personnel Management may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from OPM at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of \$15.00 for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees will not be assessed if the total charge would be \$10.00 or less.

Subpart D—Penalties

§ 295.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by OPM or as ordered by a Federal court after OPM has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OPM employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OPM employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 100 and 212

[USCBP-2007-0084; CBP Dec. 08-41]

RIN 1651-AA71

Issuance of a Visa and Authorization for Temporary Admission Into the United States for Certain Nonimmigrant Aliens Infected With HIV

AGENCY: Customs and Border Protection; DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to provide, on a limited and categorical basis, a more streamlined process for nonimmigrant aliens infected with the human immunodeficiency virus (HIV) to enter the United States as visitors on temporary visas (for business or pleasure) for up to 30 days. Nonimmigrant aliens who do not meet the specific requirements of the rule or who do not wish to consent to the conditions imposed by this rule may elect to seek admission under current procedures and obtain a case-by-case determination of their eligibility for a waiver of the nonimmigrant visa requirements concerning inadmissibility for aliens who are infected with HIV.

DATES: This rule is effective on October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Michael D. Olszak, Customs and Border Protection, Office of Field Operations, (703) 261-8424.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background and Purpose
- II. The Final Rule
- III. Discussion of Comments
 - A. Objections to the Inadmissibility of HIV-Positive Aliens
 - B. Opposition to Admission of HIV-Positive Aliens
 - C. Asylees and the Required Waiver of Adjustment of Status
 - D. Privacy Rights/Annotation of Visas
 - E. Whether the Rule Is More Stringent Than the Existing Process
 - F. Sufficient Insurance and Medication
 - G. Human Rights Concerns
 - H. Public Health Reasons for the Rule
 - I. Disparate Treatment Applied to Contagious Diseases
 - J. The 30-Day Temporary Admission Limit
 - K. Extension of the Comment Period
 - L. Vagueness in Criteria and Medical Expertise of Consular Officers
 - M. Negative Impact on United States Citizens
 - N. Focus on Illegal Aliens
 - O. Aliens Who Are Unaware of Their HIV Status

- P. Appeal of Decision
 - Q. Future Bar Due to Noncompliance
 - R. Effect on Naturalization and Aliens From Visa Waiver Countries
 - S. Returning Permanent Residents
- IV. Statutory and Regulatory Reviews

I. Background and Purpose

Section 212 of the Immigration and Nationality Act (INA) makes ineligible for admission into the United States any nonimmigrant alien "who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance." See INA section 212(a)(1)(A)(i); 8 U.S.C. 1182(a)(1)(A)(i); 42 CFR 34.2.¹ The Secretary of Homeland Security may authorize visa issuance and temporary admission of such nonimmigrants despite existing grounds of inadmissibility, subject to conditions prescribed by the Secretary. See INA section 212(d)(3)(A); 8 U.S.C. 1182(d)(3)(A).

On December 1, 2006, the President directed the Secretaries of State and Homeland Security to initiate a rulemaking action to propose a categorical authorization to allow HIV-positive nonimmigrant aliens to enter the United States through a streamlined process. See White House, *Fact Sheet: World AIDS Day 2006*, (December 1, 2006), <http://www.whitehouse.gov/news/releases>. On November 6, 2007, DHS published a notice of proposed rulemaking proposing a streamlined process for HIV-infected nonimmigrant aliens to more easily enter the United States through a streamlined process. See 72 FR 62593.

This final rule adopts the proposed amendments to the regulations and simplifies the process for authorization of admission with some modifications in light of the public comments received. Under the final rule, DHS will allow aliens who are HIV-positive to enter the United States as visitors (for business or pleasure) for a temporary period not to exceed 30 days, without being required to seek such admission under the current, more complex (individualized, case-by-case) process provided under the current DHS procedures.

¹ At the time the proposed rule was published, INA section 212a(1)(A)(i) specifically listed the etiologic agent that causes acquired immune deficiency syndrome. That language was deleted by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Public Law 110-293, section 305, 122 Stat. 2918 (July 30, 2008). As Discussed below, however, the Department of Health and Human Services (HHS) regulatory text implementing the deleted prohibition continues to exist at the time of promulgation of this final rule.

The current process requires the Department of State (DOS) to make individual recommendations to DHS, which must make a case-by-case evaluation and decision to authorize the issuance of the visa and the applicant's temporary admission. This process takes significant time. In fiscal year (FY) 2007, the average processing time for DHS to make decisions on such consular nonimmigrant recommendations (for issuance of visas and authorization for temporary admission) was 18 days. This final rule streamlines this process and will make visa authorization and issuance available to many aliens who are HIV-positive on the same day as their interview with the consular officer.

II. The Final Rule

An alien who is HIV-positive is currently inadmissible to the United States under INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i), as implemented through 42 CFR 34.2. As more fully discussed in the proposed rule, such aliens have been, and are currently, able to apply for admission to the United States pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), and applicable DHS regulations (8 CFR 212.4(a)), which allow the Secretary of Homeland Security to authorize issuance of a visa and temporary admission despite certain grounds for inadmissibility. 72 FR 62593, 62594-5 (Nov. 6, 2007). These existing processes require specific, individualized action by DHS upon submission of eligibility information by the alien (the same kind of information that is required under the proposed regulations) that must be reviewed, evaluated, and ruled upon on a case-by-case basis. In contrast, the process established in this final rule would authorize a consular officer or the Secretary of State to categorically grant a nonimmigrant visa and authorize the applicant to apply for admission into the United States, notwithstanding an applicant's inadmissibility due to HIV infection, if the applicant meets applicable requirements and conditions, without the additional step of seeking review and decision by DHS prior to the granting of the nonimmigrant visa. This categorical authorization provides a more streamlined and rapid process for obtaining temporary admission under INA section 212(d)(3)(A)(i), 8 U.S.C. 1182(d)(3)(A)(i).

Under current criteria for authorizing admission of otherwise inadmissible nonimmigrant aliens generally, DHS must take into consideration the risk of harm to society if the applicant is admitted into the United States, the seriousness of any immigration law or

criminal law violations (if any), and the nature of the reason for travel. See *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). These are general criteria applicable to any application for authorization of a visa under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A).

DHS currently allows otherwise inadmissible aliens to apply for admission on a case-by-case basis by employing a balancing test involving several factors that incorporates the criteria required under *Hranka* (regardless of whether the authorization is applied for before a consular officer, the Secretary of State, or directly to DHS). As discussed in the proposed rule, DHS applies these criteria to HIV-positive aliens seeking admission to the United States on a temporary basis by considering whether: (1) The danger to the public health from admission of the nonimmigrant alien is minimal; (2) the possibility of the transmission of the infection is minimal; and (3) any cost will be incurred by any level of government agency in the United States (local, State, or Federal) without the prior consent of that agency. Consular officers must find (based on evidence provided by the applicant that satisfies reviewing officials) that the first two factors are no more than minimal and that there will not be a cost to an agency absent prior consent.

This final rule incorporates these criteria, as well as additional factors applied under current policy that were developed in a series of instructions from the former Immigration and Naturalization Service (INS) and the Department of Justice (DOJ). Nonimmigrant aliens who are HIV-positive who do not meet the specific circumstances of these clarifying instructions or who do not wish to consent to the conditions imposed by this rule may still elect a case-by-case determination of their eligibility for issuance of nonimmigrant visas and admission.

This final rule provides an additional avenue for temporary admission of HIV-positive nonimmigrant aliens while minimizing costs to the government and the risk to public health. These goals are accomplished by setting requirements and conditions that govern an alien's admission, affect certain aspects of his or her activities while in the United States (e.g., using proper medication when medically appropriate, avoiding behavior that can transmit the infection), and ensure his or her departure after a short stay. This final rule facilitates the temporary admission to the United States of HIV-positive nonimmigrant aliens.

This final rule is consistent with Congress' humanitarian purpose in enacting the limited waiver of INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), and complies with the statute regarding aliens inadmissible due to health reasons by prescribing "conditions * * * to control and regulate the admission and return of inadmissible aliens applying for temporary admission." INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). Thus, under the final rule, an HIV-positive applicant for a nonimmigrant visitor visa would be required to satisfy criteria designed to ensure that the risk to the public health is minimized to the greatest reasonable extent and that no cost will be imposed on any level of government in the United States (local, State, or Federal). The short duration of admission under the amended regulation, and the various conditions designed to control the alien's temporary stay and ensure his or her return (departure from the United States), minimize the risk of disease transmission in the United States, as well as the risk of increased burden on our public health resources. HIV-positive aliens not meeting the criteria under the amended regulation would still be able to seek individualized (case-by-case) consideration for admission pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), under current DHS policy. See 8 CFR 212.4(a) or (b).

The final rule includes specific requirements (based in large part on the existing criteria) discussed in the proposed rule. 72 FR at 62595-6. After consultation with the HHS' Centers for Disease Control and Prevention, and National Institutes of Health, and careful consideration of the comments received from the public on the proposed rule, DHS has determined not to change the criteria relating to medical etiology, personal understanding, limited potential health danger, continuity of health care, temporary admission, general enforcement, and general duration. DHS has made several modifications in light of the public comments, as discussed more fully below.

Several commenters questioned whether it was appropriate to impose a waiver of adjustment of status pursuant to a grant of asylum under INA section 208, 8 U.S.C. 1158. After further consideration, DHS agrees that asylees have continued eligibility for permanent resident status; therefore, under the final rule, an alien who has been granted asylum after having been admitted pursuant to the proposed categorical authorization will have continued eligibility to apply to adjust

status under the asylum statute and regulations. However, nothing within the rule exempts the alien from the requirement that the alien establish his or her eligibility to adjust under INA section 209, 8 U.S.C. 1159. Specifically, nothing within this rule waives any of the requirements for adjustment of status including, but not limited to, the requirements in 8 CFR part 209.

Additionally, the short duration raised a number of questions about extensions. After further consideration, DHS has decided to permit an additional period or periods of satisfactory departure in exigent circumstances under a provision modeled after the Visa Waiver Program. See 8 CFR 212.4(f)(5) of this final rule.

Some commenters questioned whether aliens who receive this visa authorization will receive visas that identify them as HIV-positive. The visa will not be annotated in a manner that would allow the public to identify the alien as HIV-positive.

This final rule does not create the provision for temporary admission of HIV-positive aliens; such a provision exists in statute and regulation. This rule merely provides an alternative, quicker process for obtaining admission to the United States under INA section 212(d)(3)(A)(i) 8 U.S.C. 1182(d)(3)(A)(i).²

III. Discussion of Comments

The proposed rule solicited public comments over a 30-day comment period. DHS received over 700 comments.

A. Objections to the Inadmissibility of HIV-Positive Aliens

By far the most numerous of all the comments are those objecting to the inadmissibility of HIV-positive aliens. Many of these commenters objected to the proposed rule's process and called for repeal of the governing statute's ban on HIV-positive aliens for various reasons, including the following: It is unnecessary and ineffective to protect the American public; it is discriminatory; it is unconstitutional; it is outdated and does not reflect current medical science. Others among these commenters expressed approval of the proposed process to streamline temporary admission for these aliens as a first step but also stated that the rule does not go far enough to make it easier for these aliens to travel to the United States. These latter commenters called also for the repeal of the statute's HIV admission ban as a next step. One

² The final rule adopts, without change, the technical amendments to 8 CFR 212.4(e).

commenter suggested that the United States mirror Australia's approach to admitting HIV-positive aliens (described only as less restrictive). Several commenters stated that international AIDS conferences are not held in the United States as a result of the inadmissibility of HIV-positive aliens.

Some commenters objected to the governing statute's inadmissibility provision that imposes the travel and immigration ban on HIV-positive aliens and to the proposed rule which, they claimed, creates the impression that the alleged discriminatory statute can be mitigated by the proposed process for temporary admission of these aliens. Some comments called upon the Secretary of Homeland Security and the President to withhold publication of a final rule and support repeal of the statute that imposes this inadmissibility.

Repeal of the statutory inadmissibility provision (the admission ban) applicable to HIV-positive aliens is within the province of Congress as a matter of law, and the President recently signed legislation that removes from applicable law the language requiring that HIV must be included in the list of communicable diseases of public health significance. See Public Law 110-293, 122 Stat. 2918 (July 30, 2008). The INA, as amended, makes inadmissible to the United States any alien "who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance * * *" INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i). Although Public Law 110-293 eliminates the requirement that HIV be included in the list of communicable diseases of public health significance (as defined at 42 CFR 34.2), HIV remains on that list until HHS amends its regulation. See 42 CFR 34.2. HHS has indicated its intention to do so by rulemaking; pending such action, any alien who is HIV-positive is still inadmissible to the United States.

This regulation will permit short-term admission while HHS completes a rulemaking to remove HIV from the list of communicable diseases of public health significance. 42 CFR 34.2.

B. Opposition to Admission of HIV-Positive Aliens

A few commenters expressed objection to admission of HIV-positive aliens under the discretionary authority provision of the governing statute and urged its repeal.

In the statute that imposed the ban on admission of aliens with communicable diseases of public health significance, Congress also provided for the

discretionary exercise of authority to admit these aliens (among others) for a temporary period under certain circumstances. INA section 212(d)(3)(A), 8 U.S.C 1182(d)(3)(A). Congress restricted the availability of this discretionary authority by precluding its application to aliens who are inadmissible due to several of the security and related grounds; Congress imposed no such restriction on aliens inadmissible on other grounds, including health-related reasons. Also, Congress has made available a waiver of inadmissibility for immigrants seeking admission to the United States who are inadmissible due to a communicable disease listed by HHS. INA sections 209(c) and 212(g), 8 U.S.C. 1159(c) and 1182(g).

This rule does not create a new regulatory provision allowing HIV-positive aliens to enter the United States temporarily; the rule merely provides an alternative process in the regulations to streamline issuance of nonimmigrant visas to, and the temporary admission of, HIV-positive aliens under existing statutory authority within the Secretary's discretion. While the existing process provides for case-by-case authorization (by DHS) for issuing visas and authorizing temporary admission, the authorization process provided in this rule is categorical, i.e., authorization is granted through this rulemaking to any alien applicant who meets the requirements and conditions. The Secretary may exercise his discretion by rulemaking rather than on a case-by-case basis and is doing so here. *Lopez v. Davis*, 531 U.S. 230, 243–44 (2001) (quoting *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 612 (1999)) (emphasis added); *Yang v. INS*, 79 F.3d 932, 936 (9th Cir.), cert. denied, 519 U.S. 824 (1996).

The final rule contains several requirements to minimize to the greatest reasonable extent public health risks and risk of cost to any agency of any level of government in the United States. The final rule also imposes conditions to control and regulate the admission and return (to their home countries) of beneficiaries of the categorical authorization.

C. Asylees and the Required Waiver of Adjustment of Status

Several commenters objected to the requirement of the proposed rule that an applicant must waive his right to file for an adjustment of status to that of lawful permanent resident if he applied for and was granted asylum in the United States. Some commenters objected also to the requirement that an applicant must waive his right to file, after

entering the United States under the proposed categorical authorization, an application for a change of nonimmigrant status or extension of stay.

DHS agrees that asylees obtain a special status under INA section 208, 8 U.S.C. 1158, that, where possible, should be recognized consistently. Therefore, DHS has modified the adjustment of status waiver in the final rule to clarify that applicants for the categorical authorization will not be required to waive the opportunity to apply for adjustment of status should they be granted asylum after entering the United States via the categorical process. The final rule will retain the required waivers relating to change of nonimmigrant status, extension of stay, and adjustment of status other than through the asylum process. Any alien who is unwilling to agree to these waivers may apply for temporary admission under the existing process of 8 CFR 212.4(a) which is not conditioned on the making of these waivers. However, this waiver is for admission as a nonimmigrant. These visas are not available for aliens who intend to stay permanently in the United States as immigrants. Aliens seeking permanent resident status must apply for immigrant visas and fulfill the requirement for immigrants set out in the INA.

D. Privacy Rights/Annotation of Visas

Many commenters expressed concern about the privacy of applicants for the proposed categorical authorization. Primarily, the concern relates to whether the alien's visa (included within his or her passport) would be annotated to indicate admission under the rule's categorical authorization process. These commenters emphasized the stigma attached to HIV status and the risk that annotation could subject these aliens to discrimination. Some of these commenters expressed privacy concerns relative to a DHS database for HIV-positive aliens.

Some commenters questioned whether aliens who receive this visa authorization will receive visas that identify them as HIV-positive. The visa will not be annotated in a manner that would allow the public to identify the alien as HIV-positive.

Section 222(f) of the INA, 8 U.S.C. 1202(f), provides that DOS records pertaining to visa issuance or refusal are confidential, and shall be used only for the formulation, amendment, administration, or enforcement of the immigration and other laws of the United States, with exceptions not relevant here. These confidentiality

provisions serve to protect disclosures made as part of an application for a nonimmigrant visa by an alien who is HIV-positive. Moreover, under the final rule's categorical authorization process, unlike the existing process, there is no need for DHS to make case-by-case determinations on individual recommendations from the DOS. DHS will necessarily create the same records relative to aliens receiving authorization for visa issuance under the process (e.g., electronic records), as DHS normally creates for all aliens with visas who gain temporary admission as nonimmigrants. DHS will not maintain a separate database of aliens who are admitted under the categorical authorization process.

DOS scrupulously adheres to the statutory requirement regarding the confidentiality of information submitted during the consular interview process. Record information on applicants will be maintained by the DOS in accordance with confidentiality and security requirements, as well as any DOS System of Records Notices and Privacy Impact Assessments relative to any applicable systems covering this data collection.

E. Whether the Rule Is More Stringent Than the Existing Process

Many commenters contended that the requirements and conditions of the proposed process make it more stringent than the existing process. These commenters therefore questioned that it is a "streamlined" process. Some recommended simplifying the process. One commenter suggested that DHS not make any change to the regulations, leaving the existing case-by-case process as the sole option.

The characterization of the categorical authorization process under the proposed rule and this final rule as "streamlined" refers to the fact that the process, unlike the existing process, does not require the alien's application for a visa and temporary admission to be submitted to DHS with the consular officer's recommendation. Under the existing process, DHS must make a case-by-case evaluation and decision to authorize the issuance of the visa and the applicant's temporary admission. This step in the process necessarily takes time. In FY 2007, the average DHS processing time for all consular nonimmigrant recommendations (for issuance of visas and authorization for temporary admission) was 18 days. The categorical authorization process under this final rule does not require that step, and, therefore, the rule is less cumbersome and permits consular officers to issue visas on the same day

the alien applies for the visa in many cases. The process is, therefore, more streamlined.

DHS is authorizing issuance of visas and temporary admission on a categorical basis only to those aliens who meet the rule's specific requirements and conditions. An alien may choose to apply for temporary admission under the existing case-by-case decision process if he or she wishes.

The existing process also imposes conditions that an applicant must meet to gain temporary admission, many of which are the same or similar to the conditions of this final rule's process. The conditions of the existing process have been developed through adjudication (*see Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978)) and several instructions issued by the former INS. With this final rule, DHS is consolidating into one transparent source, the conditions and instructions applicable to HIV-positive aliens who wish to apply for categorical authorization for admission to the United States; the same conditions that have historically governed discretionary temporary admission under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). The process implemented under this final rule retains the same evidentiary requirements as the existing process while providing an alternative to the case-by-case review by DHS that is required under the existing regulation. The rule, however, adds restrictions on application for extension of stay, change of nonimmigrant status, and adjustment of status to that of permanent resident (other than through asylum). These restrictions are necessary to control the admission and return of these aliens since DHS is not performing a case-by-case review.

F. Sufficient Insurance and Medication

Many commenters objected to the requirement in the proposed rule (8 CFR 212.4(f)(2)(v)), that an alien admitted under the proposed process for categorical authorization have possession of or access to an adequate supply of antiretroviral drugs (if medically appropriate) for the length of anticipated stay, and sufficient assets, such as medical insurance, to cover any medical care that may be necessary while in the United States. Some of these commenters mentioned that an alien may not have insurance or enough money to cover a medical event, some referring particularly to aliens from poor countries. Others questioned how an alien could establish adequate assets, some referring again to aliens from poor or third world countries. Still others

asked about unanticipated expenses, and objected to requiring assets for these expenses. Lastly, several commenters suggested that this rule is racist because HIV-positive populations from developing countries are less likely to have access to medication and medical insurance.

The requirement to demonstrate availability of assets, such as through proof of insurance, is a reasonable condition meant to ensure that the applicant's short-term visit will not cause a financial burden to the American public and that there will be no cost to any agency of the United States without that agency's prior consent. An alien who is likely to become a public charge is inadmissible to the United States under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). The totality of circumstances must be considered in determining whether or not a person is likely to become a public charge. The requirement that an alien possess an adequate supply of medication (if medically appropriate), or have access to such a supply in the United States, would reduce this risk. DHS is aware that prescribed medication is not always necessary; the treatment protocol is determined by the patient's medical service provider. As with other medical determinations for visa purposes, the appropriateness of the alien's treatment protocol is subject to review by DOS' panel physicians. The requirement that the applicant not currently be exhibiting symptoms of an active, contagious infection with AIDS is also relevant to this determination.

Another consideration in deciding whether to exercise discretion favorably for an applicant for categorical authorization is whether any cost will be incurred by any agency of the United States (including State and local government) without that agency's prior written consent. Thus, applicants who do not have sufficient assets to cover the cost of their stay will not benefit from this new provision. Any written offer by a United States agency to provide medication and/or funding that is adequate for the applicant's travel will be considered a favorable factor. Any credible offer from any other financially stable source to provide medication and/or funding that is adequate for the applicant's travel will also be considered a favorable factor. In addition, the nature and duration of the applicant's travel plan and his or her present health are factors for consideration.

An applicant may establish that resources are available to cover medical expenses through several means. First, some medical facilities are operated by

State or Federal agencies and, as a matter of policy, do not make provisions for collecting fees from patients accepted for treatment. If an applicant establishes, through documentation provided by a medical facility, that the facility has agreed to provide the applicant services without reimbursement, or that its free services are available to the applicant or to similarly situated persons (such as nonimmigrant aliens) without specific mention of the applicant, the applicant is eligible for visa issuance and temporary admission even if the facility is supported by public funds.

An applicant may have sufficient personal assets to cover anticipated treatment. The assets must be available in the United States within the time frame required for payment by the medical facility. Assets can be established by commonly available documentation. Sponsors (individuals or organizations) may offer to cover potential medical expenses. Such sources should be able to provide documentation of intent and capability to provide that coverage. Finally, short-term medical trip insurance may be available to cover medical costs that the applicant may incur during the relatively short (30-day) period of admission. In every instance above, the applicant must, and should be able to, satisfy the consular officer that assets will be available within the United States to cover anticipated expenses. Again, an alien may seek admission under the existing process if he is unwilling or unable to meet the conditions of this final rule's process. The existing process, through the consular officer interview and DHS review, involves many similar requirements relating to the applicant's health and ability to cover expenses.

Regarding unanticipated medical expenses, the likelihood of such expenses is judged by the totality of circumstances in each applicant's case. Offers of support from individuals and organizations, as well as personal assets, will be given consideration.

DHS and DOS will make every effort to ensure that these regulations are applied consistently without regard to inappropriate considerations, such as an applicant's race.

G. Human Rights Concerns

Some commenters pointed out that the United States is one of only a few countries in the world that restricts travel for those who are HIV-positive. These commenters contended that this is a violation of basic human rights (to travel) and that DHS and HHS should remove HIV infection from the list of

contagious diseases of public health significance.

As discussed in the proposed rule, historically, Congress clearly expressed its intent that HIV infection be listed as a communicable disease of public health significance in enacting a statute to that effect. Because Public Law 110–293 eliminated a mandatory listing from the INA, HHS has indicated that it is beginning the process of removing HIV from the list of communicable diseases of public health significance by rulemaking. However, while that process is developing, through rulemaking, DHS is providing a streamlined process for these aliens to be granted temporary admission into the United States as an immediate interim option, pending HHS's plan to remove HIV from the list of communicable diseases of public significance.

H. Public Health Reasons for the Rule

Several commenters contended that the proposed process, with its requirements and conditions, is not supported by medical science, *i.e.*, that the need for the limitations in admitting HIV-positive aliens is not based on sound public health reasons.

The final rule's process was developed in consultation with HHS's Centers for Disease Control and Prevention and National Institutes of Health. DHS relied on those knowledgeable agencies to provide input based on current science. HHS continues to list HIV as a communicable disease of public health significance and DHS must continue to apply the statutory provisions regarding inadmissibility and discretionary authority for temporary admission in a manner appropriate to safeguard the public from what is still recognized under the current statute and regulation as a disease of public health significance.

I. Disparate Treatment Applied to Contagious Diseases

A few commenters contended that the statutes and regulations pertaining to inadmissibility, discretionary authorization, and process that limit admission to the United States treat HIV infection differently than other communicable diseases, including sexually transmitted diseases (STDs). These commenters questioned the rationale for this disparate treatment and contended that the statute discriminated against aliens who are HIV-positive.

When the statute treated HIV infection (whether or not it is considered a STD) as a communicable disease of public health significance

that disqualifies a carrier of the disease from admission to the United States (subject to exception), DHS utilized a lengthy detailed process for determining whether to grant temporary admission. Accordingly, DHS proposed an alternative, streamlined process for HIV-positive aliens to be granted temporary admission into the United States pending completion of HHS rulemaking.

The HHS list does not cover all communicable diseases, but HHS is charged with the responsibility and has the expertise to make distinctions. Some diseases are on the list, including some STDs (HIV, gonorrhea), while others are not. That a given disease is placed on the list while others are not is not, by itself, evidence of discrimination, nor does it show that the disease is wrongfully on the list. Other non-STDs covered include leprosy (infectious) and tuberculosis (active). Other STDs covered include chancroid, granuloma inguinale, lymphogranuloma venereum, and syphilis (infectious stage). As HIV remains on the HHS list pending further action, publishing a final rule to put into place a streamlined process for temporary admission is appropriate.

J. The 30-day Temporary Admission Limit

A few commenters objected to the 30-day limit imposed by the rule for HIV-positive aliens entering the United States under the rule's categorical authorization process. These commenters contended that this period is needlessly short.

DHS has previously granted blanket authorizations under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), for specific, limited purposes, such as to permit HIV-positive aliens to attend particular events, including the Salt Lake City Olympic games, the United Nations General Assembly Special Session on HIV/AIDS in 2001, various Universal Fellowship of Metropolitan Community Churches events, and the 2006 Gay Games in Chicago. Since 1990, aliens who are HIV-positive have rarely been given blanket authorizations for an admission of greater than 10 days. This new process will allow admissions for up to 30 days, which is in line with 30-day admissions often authorized under the individualized, case-by-case process.

The final rule describes a new (alternative) option for nonimmigrant aliens with HIV who wish to enter the United States in B–1/B–2 status for periods of time that do not exceed 30 days (but a provision for authorization of satisfactory departure in exigent circumstances is included in this final rule). Moreover, the final rule authorizes

two applications for admission during the 12-month period of the visa validity. This reasonable condition of visa issuance and admission to the United States applies to the majority of nonimmigrants traveling to the United States (regardless of particular nonimmigrant status). For those who anticipate traveling in other nonimmigrant categories or for longer than 30 days, the processes described in 8 CFR 212.4(a) and (b) remain available.

Moreover, many of the admissions under the existing process for HIV-positive aliens have been more narrowly limited to periods corresponding to a particular event in the United States, such as a seminar or convention. Typically, these admissions have been for less than 30 days. Admission under the existing discretionary authorization process also has been more restrictive for nonimmigrant aliens seeking to enter the United States for general tourism purposes. In these respects, the final rule's process is more advantageous to HIV-positive aliens seeking to enter the United States.

However, DHS recognizes that emergencies do occur and, accordingly, has added to this final rule a provision for authorizing an additional period or periods of stay, as appropriate and as deemed necessary by appropriate DHS officials, where an alien admitted under the final rule's process experiences exigent circumstances that prevent his or her departure from the United States. This provision is modeled after the "satisfactory departure" provision under the Visa Waiver Program regulations. 8 CFR 217.3(a); *see* 8 CFR 212.4(f)(5) as adopted in this final rule.

K. Extension of the Comment Period

A few commenters requested additional time to file comments on the proposed rule.

The comment period was open for 30 days, and over 700 persons submitted comments. The comments submitted come from a wide variety of persons and appear to cover a wide breadth of relevant issues and objections. DHS concludes that there was adequate opportunity for public participation and does not see the need to extend the comment period.

L. Vagueness in Criteria and Medical Expertise of Consular Officers

One commenter stated that the criteria of the rule's categorical authorization process that must be met are vague and cannot be administered consistently because consular officers are not able to assess the medical conditions the proposal vaguely puts forward. Similarly, four commenters suggested

that consular officers are not trained to handle medical issues.

DHS disagrees. DOS has extensive experience processing applications under the existing HIV authorization process. In order to ensure consistent application of the criteria, DOS has issued specific instructions to consular officers regarding how to evaluate applications for admission to the United States, including medical issues such as those in question. In addition, consular officers may consult with panel physicians to assist with medical issues when necessary.

M. Negative Impact on United States Citizens

One commenter stated that the proposal would have a negative effect on United States citizens.

DHS disagrees with this comment. This rule only affects nonimmigrant alien visitors to the United States and has no direct effect on United States citizens.

N. Focus on Illegal Aliens

One commenter suggested that DHS should focus its resources on the illegal alien population in the United States.

DHS is committed to enforcing the laws within its purview, including those laws that relate to illegal immigration and those laws that relate to public health concerns.

O. Aliens Who Are Unaware of Their HIV Status

One commenter suggested that DHS should focus its resources on those aliens seeking admission to the United States who are not yet aware that they are HIV-positive. Another commenter suggested that DHS focus on education and the prevention of AIDS.

In order to determine whether undiagnosed nonimmigrant aliens are HIV-positive, a medical examination would be required for all nonimmigrant visa applicants. DHS is not proposing to require such an examination as part of this rulemaking. However, the U.S. government is committed to preventing the global spread of AIDS through education and other measures.

P. Appeal of Decision

One commenter objected because the proposed regulation does not specifically provide for appeal of a consular officer's decision. If an alien is denied a visa and temporary admission under the rule's process, he or she may seek admission under the existing process for a case-by-case determination of eligibility.

Q. Future Bar Due to Noncompliance

One commenter contended that an alien who fails to comply with a condition of admission under the final rule's process should not be barred from seeking authorization under the process in the future.

DHS disagrees and believes that this is a reasonable condition to ensure that nonimmigrant aliens comply with the conditions for admission under this rule's process. In addition, an alien who is ineligible for authorization under these regulations because he or she has previously failed to comply with a condition for admission, or for other reasons, can still seek authorization under the existing case-by-case process. This is similar to the restriction of previous violators of the Visa Waiver Program (VWP) from being able to use the VWP program again for admission. See INA section 217(a)(7), 8 U.S.C. 1187(a)(7). In both of these situations, the violator may still apply for a visa; he or she is only barred from using the streamlined process of this regulation or VWP, respectively.

R. Effect on Naturalization and Aliens from Visa Waiver Countries

One commenter expressed concern regarding the effect of the proposed regulations on a permanent resident's ability to become a United States citizen. Several commenters expressed concern regarding the effect of the proposed regulations on travelers from visa waiver countries.

The rule's process does not affect the eligibility of a permanent resident to qualify for naturalization. In addition, these regulations do not change eligibility for aliens seeking admission to the United States under the Visa Waiver Program.

S. Returning Permanent Residents

One commenter objected that an HIV-positive alien with permanent resident status could never travel outside the United States because he would not be allowed to return.

An alien with status as a permanent resident of the United States who travels temporarily outside the United States and returns is not considered to be applying for admission for immigration purposes unless one of the six conditions delineated in INA section 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C), apply. Therefore, absent any of one of the six conditions, a permanent resident alien who travels outside the United States will not be subject to any of the grounds of inadmissibility found at INA section 212(a), 8 U.S.C. 1182(a). If one of the six conditions applies, the

permanent resident alien is subject to any applicable ground of inadmissibility.

IV. Statutory and Regulatory Reviews

A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that a final rule becomes effective no less than 30 days from the date of publication. Rules that grant or recognize an exception or relieve a restriction, however, can be made effective immediately upon publication. This rule does not add new requirements or restrictions; instead it codifies existing criteria for nonimmigrant aliens infected with HIV to obtain a short-term visa authorization. This final rule also removes certain procedural obstacles in the process and provides a more streamlined procedure for HIV-positive aliens to seek admission into the United States. DHS therefore believes that this rule relieves current restrictions on the admissibility to the United States of HIV-positive nonimmigrant aliens. Accordingly, this final rule will become effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

DHS has reviewed the final rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The individual non-immigrant aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Thus, the RFA does not apply.

C. Unfunded Mandates Reform Act of 1995

The final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 12866

This rule has been determined to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review. There are no new costs to the public associated with this rule. This rule does not create any new or additional requirements.

E. Executive Order 13132

The final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

The final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to OMB, for review and approval, any reporting and recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects*8 CFR Part 100*

Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

Amendments to the Regulations

■ For the reasons stated in the preamble, parts 100 and 212 of chapter I of title 8 of the Code of Federal Regulations (8 CFR parts 100 and 212) are amended as follows:

PART 100—STATEMENT OF ORGANIZATION

■ 1. The general authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.7 [Amended]

■ 2. Section 100.7 is amended by removing the citation “212.4(g)” in the list of parts and sections and replacing it with the citation “212.4(h)”.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The general authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458).

■ 4. Section 212.4 is amended by:

■ a. In paragraph (e), removing the citation “212(a)(1)” the first time it appears and replacing it with “212(a)(1)(A)(iii)”, and removing the citation “212(a)(1) of the Act” and replacing it with “212(a)(1)(A)(iii)(I) or (II) of the Act due to a mental disorder and associated threatening or harmful behavior”;

■ b. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j) and adding new paragraph (f) to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

* * * * *

(f) *Inadmissibility under section 212(a)(1) for aliens inadmissible due to HIV.*

(1) *General.* Pursuant to the authority in section 212(d)(3)(A)(i) of the Act, any alien who is inadmissible under section 212(a)(1)(A)(i) of the Act due to infection with the etiologic agent for acquired immune deficiency syndrome (HIV infection) may be issued a B-1 (business visitor) or B-2 (visitor for pleasure) nonimmigrant visa by a consular officer or the Secretary of State, and be authorized for temporary admission into the United States for a period not to exceed 30 days, subject to authorization of an additional period or periods under paragraph (f)(5) of this section, provided that the authorization is granted in accordance with paragraphs (f)(2) through (f)(7) of this section. Application under this paragraph (f) may not be combined with any other waiver of inadmissibility.

(2) *Conditions.* An alien who is HIV-positive who applies for a nonimmigrant visa before a consular officer may be issued a B-1 (business visitor) or B-2 (visitor for pleasure) nonimmigrant visa and admitted to the United States for a period not to exceed 30 days, provided that the applicant establishes that:

(i) The applicant has tested positive for HIV;

(ii) The applicant is not currently exhibiting symptoms indicative of an active, contagious infection associated with acquired immune deficiency syndrome;

(iii) The applicant is aware of, has been counseled on, and understands the nature, severity, and the communicability of his or her medical condition;

(iv) The applicant's admission poses a minimal risk of danger to the public health in the United States and poses a minimal risk of danger of transmission of the infection to any other person in the United States;

(v) The applicant will have in his or her possession, or will have access to, as medically appropriate, an adequate supply of antiretroviral drugs for the anticipated stay in the United States and possesses sufficient assets, such as insurance that is accepted in the United States, to cover any medical care that the applicant may require in the event of illness at any time while in the United States;

(vi) The applicant's admission will not create any cost to the United States, or a state or local government, or any agency thereof, without the prior written consent of the agency;

(vii) The applicant is seeking admission solely for activities that are consistent with the B-1 (business visitor) or B-2 (visitor for pleasure) nonimmigrant classification;

(viii) The applicant is aware that no single admission to the United States will be for a period that exceeds 30 days (subject to paragraph (f)(5) of this section);

(ix) The applicant is otherwise admissible to the United States and no other ground of inadmissibility applies;

(x) The applicant is aware that he or she cannot be admitted under section 217 of the Act (Visa Waiver Program);

(xi) The applicant is aware that any failure to comply with any condition of admission set forth under this paragraph (f) will thereafter make him or her ineligible for authorization under this paragraph; and

(xii) The applicant, for the purpose of admission pursuant to authorization under this paragraph (f), waives any opportunity to apply for an extension of nonimmigrant stay (except as provided in paragraph (f)(5) of this section), a change of nonimmigrant status, or adjustment of status to that of permanent resident.

(A) Nothing in this paragraph (f) precludes an alien admitted under this paragraph (f) from applying for asylum pursuant to section 208 of the Act.

(B) Any alien admitted under this paragraph (f) who applies for adjustment of status under section 209 of the Act after being granted asylum must establish his or her eligibility to adjust status under all applicable provisions of the Act and 8 CFR part 209. Any applicable ground of inadmissibility must be waived by approval of an appropriate waiver(s) under section 209(c) of the Act and 8 CFR 209.2(b).

(C) Nothing within this paragraph (f) constitutes a waiver of inadmissibility under section 209 of the Act or 8 CFR part 209.

(3) *Nonimmigrant visa.* A nonimmigrant visa issued to the applicant for purposes of temporary admission under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may not be valid for more than 12 months or for more than two applications for admission during the 12-month period. The authorized period of stay will be for 30 calendar days calculated from the initial admission under this visa.

(4) *Application at U.S. port.* If otherwise admissible, a holder of the nonimmigrant visa issued under section 212(d)(3)(A)(i) of the Act and this paragraph (f) is authorized to apply for admission at a United States port of entry at any time during the period of validity of the visa in only the B-1 (business visitor) or B-2 (visitor for pleasure) nonimmigrant categories.

(5) *Admission limited; satisfactory departure.* Notwithstanding any other provision of this chapter, no single period of admission under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may be authorized for more than 30 days; if an emergency prevents a nonimmigrant alien admitted under this paragraph (f) from departing from the United States within his or her period of authorized stay, the director (or other appropriate official) having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant an additional period (or periods) of satisfactory departure, each such period not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(6) *Failure to comply.* No authorization under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may be provided to any alien who has previously failed to comply with any condition of an admission authorized under this paragraph.

(7) *Additional limitations.* The Secretary of Homeland Security or the Secretary of State may require additional evidence or impose additional conditions on granting authorization for temporary admissions under this paragraph (f) as international (or other relevant) conditions may indicate.

(8) *Option for case-by-case determination.* If the applicant does not meet the criteria under this paragraph (f), or does not wish to agree to the conditions for the streamlined 30-day

visa under this paragraph (f), the applicant may elect to utilize the process described in either paragraph (a) or (b) of this section, as applicable.

Michael Chertoff,

Secretary.

[FR Doc. E8-23287 Filed 10-3-08; 8:45 am]

BILLING CODE 9111-14-P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1333]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* October 12, 2008.

FOR FURTHER INFORMATION CONTACT:

Katherine H. Wheatley, Associate General Counsel (202/452-3779), or Jodi C. Remer, Senior Counsel (202/452-6403), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 2004 (see 69 FR 56929).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI) for June of the year preceding the adjustment (in this case, June 2007) and the CPI for June of the year when the CMP was last set or adjusted. To calculate the adjustment, the Board used the Department of Labor, Bureau of

Labor Statistics—All Urban Consumers tables, in which the period 1982-84 was equal to 100, to get the CPI values.

The calculations performed for the 2008 adjustment consisted of four categories, depending on the year in which the penalty was last set or adjusted. For penalties that changed in 2004, the relevant CPIs were June 2007 (208.352) and June 2004 (189.7), resulting in a CPI increase of 9.8 percent. For penalties that were last changed in 2000, the relevant CPIs were June 2007 (208.352) and June 2000 (172.4), resulting in a CPI increase of 20.9 percent. For penalties that were last changed in 1996, the relevant CPIs were June 2007 (208.352) and June 1996 (156.7), resulting in a CPI increase of 33.0 percent. One penalty did not exist at the time of the last adjustment and became effective in December 2005. For that penalty, the relevant CPIs were June 2007 (208.352) and June 2005 (194.5), resulting in a CPI increase of 7.1 percent.

Section 5 of the FCPIA Act provides that the adjustment amount must be rounded before adding it to the existing penalty amount. The rounding provision depends on the size of the penalty being adjusted. For example, if the penalty is greater than \$100 but less than or equal to \$1,000, the increase is rounded to the nearest \$100; if it is greater than \$1,000 but less than or equal to \$10,000, the increase is rounded to the nearest \$1,000. Because of this rounding rule, six penalty amounts are not changing at this time. For example, the penalty under 12 U.S.C. 3909(d) prior to the 2008 adjustment was \$1,100. As this penalty was last changed in 1996, the 33 percent adjustment would be \$363. Rounding that increase to the nearest \$1,000 results in an increase of \$0. The penalties that are not adjusted at this time because of this rounding formula will be subject to adjustment at the next adjustment cycle to take account of the entire period between the time of their last adjustment (1996, 2000, or 2004) and the next adjustment date. These unadjusted penalties include the inadvertently late or misleading reports under 12 U.S.C. 324; 12 U.S.C. 1832(c); Tier I penalty of 12 U.S.C. 1847(d), 3110(c); 12 U.S.C. 334, 374a, 1884; 12 U.S.C. 3909(d); and 42 U.S.C. 4012(a)(f)(5).

In accordance with section 6 of the FCPIA Act, the increased penalties set forth in this amendment apply only to violations that occur after the date the increase takes effect.

Public Law 104-134, title III, § 31001(s)(2), April 21, 1996, 110 Stat. 1321-272 amended the FCPIA Act and

provided that “[t]he first adjustment of a civil monetary penalty * * * may not exceed 10 percent of such penalty.”

Although there is one penalty for which an initial adjustment is being made, 12 U.S.C. 1820(k)(6)(A)(ii), due to the effect of the rounding rules, the calculated dollar amount increase in the penalty is the same as a 10 percent increase in this case.

Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every four years. Moreover, this regulation is ministerial and technical. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the Board has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board of Governors

amends 12 CFR part 263 to read as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1820(k), 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, 78u-2; and 28 U.S.C. 2461 *note*.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 *note*), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 12, 2004, October 12, 2000, and October 24, 1996. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are as follows:

- (1) 12 U.S.C. 324:
 - (i) Inadvertently late or misleading reports, *inter alia*—\$2,200.
 - (ii) Other late or misleading reports, *inter alia*—\$32,000.
 - (iii) Knowingly or recklessly false or misleading reports, *inter alia*—\$1,375,000.
- (2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):
 - (i) First tier—\$7,500.
 - (ii) Second tier—\$37,500.
 - (iii) Third tier—\$1,375,000.
- (3) 12 U.S.C. 1820(k)(6)(A)(ii)—\$275,000.
 - (4) 12 U.S.C. 1832(c)—\$1,100.
 - (5) 12 U.S.C. 1847(b), 3110(a)—\$37,500.
 - (6) 12 U.S.C. 1847(d), 3110(c):
 - (i) First tier—\$2,200.
 - (ii) Second tier—\$32,000.
 - (iii) Third tier—\$1,375,000.
 - (7) 12 U.S.C. 334, 374a, 1884—\$110.
 - (8) 12 U.S.C. 3909(d)—\$1,100.
 - (9) 15 U.S.C. 78u-2:

(i) 15 U.S.C. 78u-2(b)(1)—\$7,500 for a natural person and \$70,000 for any other person.

(ii) 15 U.S.C. 78u-2(b)(2)—\$70,000 for a natural person and \$350,000 for any other person.

(iii) 15 U.S.C. 78u-2(b)(3)—\$140,000 for a natural person and \$675,000 for any other person.

(10) 42 U.S.C. 4012a(f)(5):

(i) For each violation—\$385.

(ii) For the total amount of penalties assessed under 42 U.S.C. 4012a(f)(5) against an institution or enterprise during any calendar year—\$135,000.

By order of the Board of Governors of the Federal Reserve System, October 1, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8-23527 Filed 10-3-08; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24825; Directorate Identifier 2006-NE-17-AD; Amendment 39-15623; AD 2008-16-05]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 Series Turboprop Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2008-16-05. That AD applies to RRD Dart 528, 529, 532, 535, 542, and 552 Series turboprop engines. We published that AD in the **Federal Register** on July 31, 2008 (73 FR 44630). The superseded AD number in paragraph (b) in the regulatory section is incorrect. This document corrects that superseded AD number. In all other respects, the original document remains the same.

DATES: *Effective Date:* Effective October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: jason.yang@faa.gov; telephone (781) 238-7747; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: On July 31, 2008 (73 FR 44630), we published a final rule AD, FR Doc, E8-17423, in the **Federal Register**. That AD applies to

RRD Dart 528, 529, 532, 535, 542, and 552 Series turboprop engines. We need to make the following correction:

§ 39.13 [Corrected]

On page 44631, in the second column, in paragraph (b) of the regulatory section, “2007–02–17” is corrected to read “2007–02–07”.

Issued in Burlington, Massachusetts, on September 29, 2008.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–23511 Filed 10–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 744 and 774

[Docket No. 080307397–81237–01]

RIN 0694–AE33

Revisions to the Export Administration Regulations Based Upon a Systematic Review of the CCL

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to make revisions to the EAR as a result of a systematic review of the Commerce Control List (CCL) that was conducted by the Bureau of Industry and Security (BIS). This rule is the second phase of the regulatory implementation of the results of a review of the CCL that was conducted by BIS starting in 2007. The BIS CCL review benefited from input received from BIS’s Technical Advisory Committees (TACs) and comments that were received from the interested public in response to the publication of a BIS notice of inquiry on July 17, 2007. The revisions in this rule include clarifications to existing controls, eliminating redundant or outdated controls, establishing more focused and rationalized controls, and adding additional controls for clarity or for consistency with international regimes.

DATES: *Effective Date:* This rule is effective: October 6, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE33, by any of the following methods:

- *E-mail:* publiccomments@bis.doc.gov Include

“RIN 0694–AE33” in the subject line of the message.

- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

- *Mail or Hand Delivery/Courier:* Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE33.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to jseehra@omb.eop.gov, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE33)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482–2440; or by fax: 202–482–3355.

SUPPLEMENTARY INFORMATION

Background

This rule amends the EAR to make various revisions as a result of a systematic review of the CCL that was conducted by BIS. This rule is the second phase of the regulatory implementation of the results of that systematic review of the CCL that was conducted by BIS beginning in 2007. The CCL review benefited from input received from BIS’s Technical Advisory Committees (TACs) and public comments received in response to a notice of inquiry (July 17, 2007, 72 FR 39052).

On April 18, 2008, BIS published the first phase of the regulatory implementation of the CCL review in a rule titled, “Technical Corrections to the Export Administration Regulations based upon a Systematic Review of the CCL” (73 FR 21035). The first CCL review rule focused on making needed technical corrections and clarifications to the CCL. This rule, the second CCL review rule, makes substantive revisions to the EAR, including the CCL. The revisions to the CCL in this rule are

divided into four types of revisions in this background section of the preamble: (I) *Clarifications to Existing Controls*, (II) *Eliminating Redundant or Outdated Controls*, (III) *Establishing More Focused and Rationalized Controls*, and (IV) *Adding Additional Controls for Clarity or for Consistency with International Regimes*.

As a part of the implementation phase of the CCL review, the agency has also taken other non-regulatory actions to improve the public’s understanding of the CCL. These BIS actions have involved publishing certain advisory opinions and creating new web guidance to provide greater clarity to exporters and reexporters regarding existing provisions of the CCL. BIS has also created a new process whereby it has stated its intention to conduct similar types of systematic reviews of the CCL in the future in order to continuously improve the CCL.

This rule makes the following revisions to the Export Administration Regulations (EAR):

1. In Supplement No. 7 to part 742 (Description of Major Weapons Systems), under paragraph (7)(c) (Missiles and Missile Launchers), this rule adds the phrase “except model airplanes” to clarify that the unmanned aerial vehicles (UAVs) subject to this paragraph do not include model airplanes.

2. In § 744.21 (Restrictions on Certain Military End-Uses in the People’s Republic of China (PRC)), this rule makes two changes under paragraph (a) (General Prohibition) to clarify the intended scope of the items subject to this end-use control. Under the introductory text of paragraph (a), this rule clarifies that the items that are subject to the general prohibition are any items listed in Supplement No. 2 to part 744 that are subject to the EAR. Adding the phrase “subject to the EAR” will clarify that this prohibition does not extend to items that are not subject to the EAR, such as information that is publicly available. This change is needed because the § 772.1 definition of the term “item” does not distinguish between those items that are subject to the EAR and those that are not. Given this broad definition, in this paragraph the term “item” should be qualified with the phrase “subject to the EAR”.

The Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) is amended by making various substantive revisions to the CCL that are divided below into four types of revisions: (I) *Clarifications to Existing Controls*, (II) *Eliminating Redundant or Outdated Controls*, (III) *Establishing More Focused and Rationalized*

Controls, and (IV) Adding Additional Controls for Clarity or for Consistency with International Regimes.

I: Clarifications to Existing Controls

1. Revisions to the "Headings" of Existing CCL Entries

This rule is making revisions to the headings of three (3) CCL entries: 2B351, 4D993 and 6A995, to clarify the items controlled under those CCL entries.

ECCN 2B351 is amended by revising the heading to clarify the items controlled under this CCL entry by adding the phrases "as follows" and "see List of Items Controlled".

ECCN 4D993 is amended by adding the phrase, "see List of Items Controlled" at the end of the heading of the CCL entry. This rule also makes revisions to the "Items" paragraph of this ECCN by adding the conjunction "or" between "Items" paragraphs (b) and (c) to clarify the scope of the items controlled under this CCL entry.

ECCN 6A995 is amended by revising the heading to remove the phrase "not controlled by 0B001.h.6, 6A005 or 6A205", and replacing that with the phrase, "see List of Items Controlled" to the heading of this CCL entry. This revision is intended to clarify the scope of the control.

2. Revisions to "Related Controls" in CCL Entries

This rule revises the "Related Controls" paragraphs in the List of Items Controlled section in the following twelve (12) CCL entries: 1C351, 1C352, 1C353, 1C354, 1C360, 2B119, 2B350, 4E992, 7D001, 7D002, 7E002, and 7E101 by adding additional related control references or making changes for greater specificity for the related controls references. BIS includes related control references in CCL entries to assist exporters in classifying items on the CCL and in some cases provides cross-references for items that are listed on the CCL, but are under the export control jurisdiction of other U.S. Government agencies. Several of the public comments received by BIS, as a part of the CCL review process, requested that BIS add these types of additional related controls references to better assist the public in classifying their items using the CCL.

(A) Converting "Related Controls" Paragraphs Into License Requirement Notes

The revisions being made to the "Related Controls" paragraphs under these six (6) CCL entries: 1C351, 1C352, 1C353, 1C354, 1C360, and 2B350 also

involve revising and moving text from the "Related Controls" paragraph to new License Requirement notes for those CCL entries. These revisions make no change to the scope of the items controlled under those CCL entries. However, it was determined during the CCL review, that those "Related Controls" under those CCL entries could be better characterized as "License Requirement Notes". Given that determination, BIS decided it would be helpful to move those "Related Controls" references to new "License Requirement Notes" to better assist exporters and reexporters when classifying their items.

ECCN 1C351 is amended by moving subparagraphs (2) through (4) from the "Related Controls" paragraph to the newly created "License Requirement Notes" and redesignating subparagraph (5) of the "Related Controls" paragraph as a subparagraph (2).

ECCN 1C352 is amended by moving subparagraph (1) from the "Related Controls" paragraph to the newly created "License Requirement Note" and redesignating subparagraph (2) of the "Related Controls" paragraph. This rule also makes some minor revisions for clarity in the text of the new "License Requirement Note".

ECCN 1C353 is amended by moving the first sentence from the "Related Controls" paragraph to the newly created "License Requirement Note", and leaving the second sentence, which references related controls from the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services controls and the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, in the "Related Controls" paragraph.

ECCN 1C354 is amended by moving subparagraph (1) from the "Related Controls" paragraph to the newly created "License Requirement Note" and redesignating subparagraph (2) of the "Related Controls" paragraph. This rule also makes some minor revisions for clarity to the text of the new "License Requirement Note".

ECCN 1C360 is amended by moving subparagraph (1) from the "Related Controls" paragraph to the newly created "License Requirement Note" and redesignating subparagraphs (2) and (3) in the "Related Controls" paragraph as subparagraphs (1) and (2). This rule also makes some minor revisions for clarity for the text in the new "License Requirement Note".

B. Removal of Outdated "Related Controls" References in CCL Entries

The revisions made to the "Related Controls" paragraphs under the following six (6) CCL entries: 1D001, 4E992, 2B119, 7D001, 7D002 and 7E002 all involve removing nonexistent ECCNs that were listed as "Related Controls" references under those CCL entries. ECCN 1D001 had an outdated "Related Controls" reference to the nonexistent 1D102. ECCN 2B119 referred to a nonexistent 2B219, and 4E992 referred to a nonexistent 4E994. Under ECCNs 7D001, 7E001 and 7E002 outdated references to the nonexistent 7A007 are all removed with this rule.

3. Revisions to "Items" Paragraphs in CCL Entries

This rule makes revisions to the "Items" paragraphs under the following two (2) CCL entries: 1C350 and 2B350 to provide greater clarity regarding the items controlled under those CCL entries. These changes include adding additional text under some of these CCL entries, rearranging text of some of these CCL entries to improve readability, or revising the "Items" paragraphs of these CCL entries to clarify the intended scope of the control. Specifically, these revisions include the following:

ECCN 1C350 is amended by adding a sentence at the end of "Note 2" of the "License Requirement Notes" section to make persons aware that although certain mixtures as described in this note may be classified EAR99, a license may still be required for reasons set forth elsewhere in the EAR. This is stated in other parts of the EAR, but this additional text being added to this CCL entry will help make persons aware that although their commodity may not be controlled under this CCL entry, it still may require a license under other parts of the EAR.

ECCN 2B350 is amended by reordering the "Items" paragraph in the List of Items Controlled Section in order to improve the readability of the "Items" paragraph. This rule makes no changes to the items that are controlled under ECCN 2B350. This reordering of the "Items" paragraph for parallelism helps improve the readability of the "Items" paragraph of that ECCN entry. BIS is making this change to better assist the public in classifying their materials under this ECCN. In addition, this rule redesignates the "Technical Note" at the end of the "Items" paragraph in the List of Items Controlled section, as "Technical Note 1", and adds a "Technical Note 2" to define the term "alloy". This new definition of "alloy" clarifies to the public that the metal

alloys in 2B350 are those containing a higher percentage by weight of the stated metal than any other element. Lastly, under this CCL entry, this rule moves the text of the "Related Controls" paragraph to a new "License Requirement Note" to clarify the intended scope of the control.

4. Clarifications to "Items" Paragraphs To Conform With Multilateral Regimes

This rule makes clarifications to the "Items" paragraphs in these two (2) CCL entries: 4A101 and 4A980 to clarify what items are controlled under those entries and to better conform those entries to the language used in multilateral control lists.

ECCN 4A101 is amended by adding a new note at the end of the "Items" paragraph in the List of Items Controlled section to provide a definition for "radiation hardened". "Radiation hardened" is used in paragraph (b) of the "Items" paragraph, but no definition was provided, prior to publication of this rule, for this term. This new note clarifies that under this CCL entry, "radiation hardened" means that the component or equipment is designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5×10^5 rads (Si). This revision will assist the public in understanding the types of analog computers, "digital computers" and differential analyzers that are controlled under this ECCN entry.

ECCN 4A980 is amended by adding a new note at the end of the "Items" paragraph to clarify the existing control. This note clarifies that ECCN 4A980 does not control equipment limited to one finger and designed for user authentication or access control.

5. Other Assorted Clarifications to Existing Controls

Category 1 (Materials, Chemicals, "Microorganisms," and Toxins) of the CCL, is amended by adding a new note to the beginning of the category to make the public more aware that the Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA) may control exports of items subject to the EAR and on the CCL. Public comments submitted for the CCL review suggested that BIS add additional cross-references on the CCL to the FDA and DEA regulations. Supplement No. 3 to Part 730 (Other U.S. Government Departments and Agencies with Export Control Responsibilities) and certain ECCN cross-references to other agencies' controls already accomplish the same type of thing. However, in conducting the CCL review, BIS determined it

would be helpful to the public to add a new note at the beginning of Category 1 to make the public more aware that these other agencies of the U.S. Government may also apply controls to these items. This note makes no changes to the items subject to the EAR.

II. Eliminating Redundant or Outdated Controls

1. ECCN 4A994 is amended by making various revisions to the "Items" paragraph of this CCL entry to remove technically outdated controls and to update certain technical control parameters to better reflect current industry standards. Specifically, this rule deletes paragraphs (d), (e), (g), (h), and (k)(1) of the "Items" paragraph in the List of Items Controlled section of this CCL entry. This change is being made because these controls are technically outdated, so these commodities no longer need to be controlled under this CCL entry. Under paragraph (b) of the "Items" paragraph, this rule clarifies the types of digital computers that are controlled under this CCL entry and increases the Weighted TeraFLOPS (WT) control threshold for this paragraph (b) from 0.00001 WT to 0.0128 WT. In addition, under paragraph (c) of the "Items" paragraph, this rule deletes the technically outdated control parameter that was listed under paragraph (c)(2) prior to publication of this rule. This change to paragraph (c) will specify that "electronic assemblies" covered under this paragraph are those that are designed to be capable of aggregation in configurations of 16 or more processors. Finally, under paragraph (k), this rule clarifies the types of "hybrid computers" and "electronic assemblies" and specially designed components that are controlled under this CCL entry.

2. ECCN 5A991 is amended by removing three outdated entries from the "Items" paragraph under paragraphs (b)(8), (c)(2), and (c)(4) of this CCL entry. In the public comments, people asked for clarifications regarding what commodities were controlled under these three "Items" paragraphs under ECCN 5A991. However, in reviewing these three technical parameters, BIS determined that for each of the commodities controlled under this ECCN, the commodities were either covered under another ECCN (meaning these entries were merely empty boxes on the CCL), or the commodities that were controlled under one of these three "Items" paragraphs were outdated and should appropriately be designated EAR99 (meaning the commodities controlled under these three paragraphs, that were not already controlled under

another ECCN entry, were no longer commonly used by industry or the general public).

III. Establishing More Focused and Rationalized Controls

1. ECCN 1E001 is amended by adding Australia and Norway to the list of countries that are eligible to receive technology controlled under this ECCN under the provisions of License Exception TSR (Technology and software restricted) (§ 740.6), as described under paragraphs (a) or (b) of the License Exception TSR paragraph in the License Exceptions section of this ECCN entry. Prior to publication of this rule, there were seventeen countries that were eligible for License Exception TSR under this CCL entry. When this list of seventeen countries eligible for License Exception TSR was added to the CCL entry on January 15, 1998 (63 FR 2482), Australia and Norway were inadvertently not included, which is being corrected with this rule. With the addition of Australia and Norway, nineteen countries are now eligible to receive technology under License Exception TSR. As with any EAR list-based license exception, the provisions of § 740.2 and the specific provisions of the list-based license exception, in this case License Exception TSR, determine whether a list-based license exception can be used to authorize a specific transaction.

2. ECCN 2B018 is amended by removing an advisory note from the "Items" paragraph and converting that note into License Exception GBS eligibility (Shipments to Country Group B Countries) (15 CFR 740.4). The items that were described in that advisory note, prior to publication of this rule, will now be eligible for License Exception GBS, provided the transaction meets the terms and conditions of License Exception GBS and § 740.2. Under ECCN 2B018, the entire entry is controlled for national security reasons under NS column 1 and regional stability reasons under RS column 2, among others reasons for control. To be eligible for License Exception GBS, the ultimate destination must be subject to a license requirement for national security reasons only on the Commerce Country Chart and the destination must be listed in Country Group B in Supplement No. 1 to Part 740 of the EAR. The only countries listed in Country Group B that do not require a license under RS column 2 are Australia, Japan, New Zealand and countries in North Atlantic Treaty Organization (NATO). Therefore, this new License Exception GBS availability

under this ECCN entry is limited to these countries in Country Group B.

IV. Adding Additional Controls for Clarity or for Consistency With International Regimes

This rule adds new reasons for control to one (1) existing CCL entry: 1E002. This existing CCL entry was intended to have this control at an earlier time, but this control was inadvertently not added to the entry when changes were made to other parts of the EAR (e.g., a NP or MT item was added to the CCL, but the corresponding change to control the related technology or software was not made at that time). This rule adds a new item to one (1) existing CCL entry: 9E101. The EAR were previously amended to include new commodities controlled for MT reasons. However, the EAR omitted the corresponding control on the “technology” related to those commodities.

1. New Reasons for Control Being Added to Existing CCL Entry

ECCN 1E002 is amended by adding a new NP reason for control to this ECCN. This new NP reason for control applies to “technology” for items controlled by 1A002 for NP reasons. This corrects an inadvertent omission from the CCL of this NP reason for control. The intent of the U.S. Government was to have a NP technology control on the NP portion of 1E002.f applicable to the NP portion of 1A002, but in an earlier revision to the CCL this change had not been implemented into the EAR, as intended. This rule corrects that inadvertent omission by adding this NP reason for control to this existing ECCN.

2. New Items Added to Existing CCL Entry

ECCN 9E101 is amended by adding 9C110 to the heading of 9E101 to correct an inadvertent error that occurred when 9C110 was added to the CCL. ECCN 9C110 was added to the CCL on April 2, 2003 (68 FR 16144) to implement a Missile Technology Control Regime (MTCR) Plenary change. However, at the time that change was implemented in the EAR, ECCN 9E101 was not amended to add a Missile Technology (MT) technology control for this new MT commodity controlled under ECCN 9C110. Prior to publication of this rule, ECCN 9E101 controlled “technology” according to the General Technology Note for the “development” or “production” of commodities or software controlled by 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9D101, 9D103, 9D104 or 9D105. ECCN 9C110 should have been added to the heading in 9E101 when the change

implementing the MTCR Plenary change was made to the EAR, but it was inadvertently left off. This technology for ECCN 9C110 is a current control within the MTCR and should be reflected on the CCL under ECCN 9E101. This rule corrects that inadvertent error by adding this new MT control to the CCL.

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 final rule has been determined to be not significant for purposes of E.O. 12866.

2. 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 Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

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

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

5. The other changes made under this rule are nonsubstantive changes that do not meet the criteria noted in the preceding paragraph. For these nonsubstantive changes described in this paragraph, the Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. The changes made by this rule described under this paragraph are not substantive changes, but rather are clarifications to existing controls. These nonsubstantive changes are described under Part I: *Clarifications to Existing Controls* in the Background section of this rule. These nonsubstantive changes include: Revisions to the headings of existing CCL entries; removal of outdated “Related Controls” references in CCL entries; nonsubstantive revisions to “items” paragraphs in CCL entries to improve things, such as readability; and additions of “items” paragraphs for certain items subject to the licensing requirements of the U.S. Department of State. This rule does not alter any right, obligation or prohibition that applies to any person under the Export Administration Regulations (EAR). Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 744 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 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. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Supplement No. 7 to Part 742 is amended by revising paragraph (7)(c), to read as follows:

**Supplement No. 7 to Part 742—
Description of Major Weapons Systems**

* * * * *

(7) Missiles and Missile Launchers:

* * * * *

(c) Unmanned Aerial Vehicles (UAVs) of any type, including sensors for guidance and control of these systems, except model airplanes.

* * * * *

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR part 744 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. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 4. Section 744.21 is amended by revising the introductory text of paragraph (a) to read as follows:

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

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any item subject to the EAR listed in Supplement No. 2 to Part 744 to the PRC without a license if, at the time of the export, reexport, or transfer, you know, meaning either:

* * * * *

PART 774—[AMENDED]

■ 5. 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).

**Supplement No. 1 to Part 774—
[Amended]**

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” and “Toxins,” is amended by adding a new Note, immediately following the heading of Category 1, to read as follows:

Category 1—Materials, Chemicals, “Microorganisms” & “Toxins”

Note: The Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA) may control exports of items subject to the EAR and on the Commerce Control List. BIS provides cross-references to these other agency controls for convenience only. Therefore, please consult relevant FDA and DEA regulations for guidance related to the item you wish to export and do not rely solely on the EAR for information about other agency export control requirements. See Supplement No. 3 to part 730 (Other U.S. Government Departments and Agencies with Export Control Responsibilities) for more information.

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” and “Toxins,” Export Control Classification Number (ECCN) 1C350 is amended by revising paragraph (b) of Note 2 (*Mixtures*), in the “License Requirement Notes” of the “License Requirements” section, to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

* * * * *

License Requirement Notes

* * * * *

2. *Mixtures:*

a. * * *

b. A license is not required under this ECCN for a mixture, when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are designated EAR99. However, a license may be required for reasons set forth elsewhere in the EAR.

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals,

“Microorganisms,” and “Toxins,” Export Control Classification Number (ECCN) 1C351 is amended by adding three “License Requirement Notes,” at the end of the “License Requirements” section, and by revising the “Related Controls” paragraph, in the “List of Items Controlled” section, to read as follows:

1C351 Human and zoonotic pathogens and “toxins”, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirement Notes

1. All vaccines and “immunotoxins” are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded from the scope of this entry. Vaccines, “immunotoxins”, certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991.

2. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (e.g. neosaxitoxin) are designated EAR99.

3. Clostridium perfringens strains, other than the epsilon toxin-producing strains of Clostridium perfringens described in c.14, are excluded from the scope of this entry, since they may be used as positive control cultures for food testing and quality control.

List of Items Controlled

Unit: * * *

Related Controls: (1) Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State.

(2) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c); for CDC, see 42 CFR 73.3(c) and 42 CFR 73.4(c)).

* * * * *

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, “Microorganisms,” and “Toxins,” Export Control Classification Number (ECCN) 1C352 is amended by adding a “License Requirement Note,” at the end of the “License Requirements” section,

and by revising the "Related controls" paragraph, in the "List of Items Controlled section," to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

License Requirements
* * * *

License Requirement Note

All vaccines are excluded from the scope of this ECCN. See ECCN 1C991 for vaccines.

List of Items Controlled

Unit: * * *

Related Controls: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c); for CDC, see 42 CFR 73.3(c) and 42 CFR 73.4(c)).

* * * *

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins," Export Control Classification Number (ECCN) 1C353 is amended by adding a "License Requirement Note," at the end of the "License Requirements" section, and by revising the "Related controls" paragraph, in the "List of Items Controlled" section, to read as follows:

1C353 Genetic elements and genetically-modified organisms, as follows (see List of Items Controlled).

License Requirements
* * * *

License Requirement Note

Vaccines that contain genetic elements or genetically modified organisms identified in this ECCN are controlled by ECCN 1C991.

List of Items Controlled

Unit: * * *

Related Controls: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN, including (but not limited to) genetic elements, recombinant nucleic acids, and recombinant organisms associated with the agents or toxins in ECCN 1C360 (for APHIS, see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c); for CDC, see 42 CFR 73.3(c) and 42 CFR 73.4(c)).

* * * *

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins," Export Control Classification Number (ECCN) 1C354 is amended by adding a

"License Requirement Note," at the end of the "License Requirements" section, and by revising the "Related controls" paragraph, in the "List of Items Controlled" section, to read as follows:

1C354 Plant pathogens, as follows (see List of Items Controlled).

License Requirements
* * * *

License Requirement Note

All vaccines are excluded from the scope of this ECCN. See ECCN 1C991 for vaccines.

List of Items Controlled

Unit: \$ value.

Related Controls: The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, maintains controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (see 7 CFR 331.3(c), 9 CFR 121.3(c), and 9 CFR 121.4(c)).

* * * *

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins," Export Control Classification Number (ECCN) 1C360 is amended by adding a "License Requirement Note," at the end of the "License Requirements" section, and by revising the "Related controls" paragraph, in the "List of Items Controlled" section, to read as follows:

1C360 Select agents not controlled under ECCN 1C351, 1C352, or 1C354.

License Requirements
* * * *

License Requirement Note

All vaccines are excluded from the scope of this ECCN. See ECCN 1C991 for vaccines.

* * * *

List of Items Controlled

Unit: \$ value.

Related Controls: (1) Also see ECCNs 1C351 (AG-controlled human and zoonotic pathogens and "toxins"), 1C352 (AG-controlled animal pathogens), and 1C354 (AG-controlled plant pathogens). (2) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)).

* * * *

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins," Export Control Classification Number (ECCN) 1E001 is amended by revising the "License Exceptions" section, to read as follows:

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A101, 1B (except 1B999), or 1C (except 1C018, 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, 1C995 to 1C999).

* * * *

License Exceptions

CIV: N/A

TSR: Yes, except for the following:

(1) Items controlled for MT reasons; or (2) Exports and reexports to destinations outside of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" or "production" of the following:

(a) Items controlled by 1C001; or (b) Items controlled by 1A002.a which are composite structures or laminates having an organic "matrix" and being made from materials listed under 1C010.c or 1C010.d.

* * * *

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins," Export Control Classification Number (ECCN) 1E002 is amended by revising the "License Requirements" section to read as follows:

1E002 Other "technology", as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, NP, AT

Table with 2 columns: Control(s) and Country Chart. Rows include NS applies to entire entry, MT applies to 1E002.g, NP applies to "technology" for items controlled by 1A002 for NP reasons, and AT applies to entire entry.

* * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B018 is amended:

a. By revising the "License Exceptions" section; and b. By removing the "Advisory Note" at the end of the "Items" paragraph, in the "List of Items Controlled" section, to read as follows:

2B018 Equipment on the Wassenaar Arrangement Munitions List.

* * * *

License Exceptions

LVS: \$3,000, except N/A for Rwanda.

GBS: Yes, as follows, except N/A for Rwanda, MT-controlled items, or

destinations for which a license is required for RS reasons: Equipment used to determine the safety data of explosives as required by the International Convention on the Transport of Dangerous Goods (C.I.M.) Articles 3 and 4 in Annex 1 RID, provided that such equipment will be used only by the railway authorities of current C.I.M. members, or by the Government-accredited testing facilities in those countries, for the testing of explosives to transport safety standards, of the following description:

- a. Equipment for determining the ignition and deflagration temperatures;
- b. Equipment for steel-shell tests;
- c. Drophammers not exceeding 20 kg in weight for determining the sensitivity of explosives to shock;
- d. Equipment for determining the friction sensitivity of explosives when exposed to charges not exceed 36 kg in weight.

CIV: N/A

* * * * *

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B119 is amended by revising the “Related Controls” paragraph, in the “List of Items Controlled” section, to read as follows:

2B119 Balancing machines and related equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 7B101.

Related Definitions: * * *

Items:

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B350 is amended:

- a. By adding a “License Requirement Note,” at the end of the “License Requirements” section;
- b. By revising the “Related Controls” paragraph, in the “List of Items Controlled” section; and
- c. By revising the “Items” paragraph, in the “List of Items Controlled” section, to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirement Note

This ECCN does not control equipment that is both: (1) Specially designed for use in civil applications (e.g., food processing, pulp and paper processing, or water purification) and (2) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the

flow of the chemical weapons precursors controlled by 1C350.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: N/A

Related Definitions: * * *

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m³ (100 liters) and less than 20 m³ (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- a.1. Alloys with more than 25% nickel and 20% chromium by weight;
- a.2. Nickel or alloys with more than 40% nickel by weight;
- a.3. Fluoropolymers;
- a.4. Glass (including vitrified or enameled coating or glass lining);
- a.5. Tantalum or tantalum alloys;
- a.6. Titanium or titanium alloys;
- a.7. Zirconium or zirconium alloys; or
- a.8. Niobium (columbium) or niobium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- b.1. Alloys with more than 25% nickel and 20% chromium by weight;
- b.2. Nickel or alloys with more than 40% nickel by weight;
- b.3. Fluoropolymers;
- b.4. Glass (including vitrified or enameled coatings or glass lining);
- b.5. Tantalum or tantalum alloys;
- b.6. Titanium or titanium alloys;
- b.7. Zirconium or zirconium alloys; or
- b.8. Niobium (columbium) or niobium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m³ (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- c.1. Alloys with more than 25% nickel and 20% chromium by weight;
- c.2. Nickel or alloys with more than 40% nickel by weight;
- c.3. Fluoropolymers;
- c.4. Glass (including vitrified or enameled coatings or glass lining);
- c.5. Tantalum or tantalum alloys;
- c.6. Titanium or titanium alloys;
- c.7. Zirconium or zirconium alloys; or
- c.8. Niobium (columbium) or niobium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m², but greater than 0.15 m², and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

- d.1. Alloys with more than 25% nickel and 20% chromium by weight;

d.2. Nickel or alloys with more than 40% nickel by weight;

- d.3. Fluoropolymers;
- d.4. Glass (including vitrified or enameled coatings or glass lining);
- d.5. Tantalum or tantalum alloys;
- d.6. Titanium or titanium alloys;
- d.7. Zirconium or zirconium alloys;
- d.8. Niobium (columbium) or niobium alloys;
- d.9. Graphite or carbon-graphite;
- d.10. Silicon carbide; or
- d.11. Titanium carbide.

e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

- e.1. Alloys with more than 25% nickel and 20% chromium by weight;
- e.2. Nickel or alloys with more than 40% nickel by weight;
- e.3. Fluoropolymers;
- e.4. Glass (including vitrified or enameled coatings or glass lining);
- e.5. Tantalum or tantalum alloys;
- e.6. Titanium or titanium alloys;
- e.7. Zirconium or zirconium alloys;
- e.8. Niobium (columbium) or niobium alloys; or

f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

- f.1. Alloys with more than 25% nickel and 20% chromium by weight; or
- f.2. Nickel or alloys with more than 40% nickel by weight.

g. Valves with nominal sizes greater than 1.0 cm (d in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- g.1. Alloys with more than 25% nickel and 20% chromium by weight;
- g.2. Nickel or alloys with more than 40% nickel by weight;
- g.3. Fluoropolymers;
- g.4. Glass or glass lined (including vitrified or enameled coatings);
- g.5. Tantalum or tantalum alloys;
- g.6. Titanium or titanium alloys;
- g.7. Zirconium or zirconium alloys; or
- g.8. Niobium (columbium) or niobium alloys.

h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

- h.1. Alloys with more than 25% nickel and 20% chromium by weight;
- h.2. Nickel or alloys with more than 40% nickel by weight;
- h.3. Fluoropolymers;
- h.4. Glass (including vitrified or enameled coatings or glass lining);
- h.5. Tantalum or tantalum alloys;
- h.6. Titanium or titanium alloys;
- h.7. Zirconium or zirconium alloys;

h.8. Niobium (columbium) or niobium alloys; or

h.9. Graphite or carbon-graphite.

i. Multiple-seal and seal-less pumps with manufacturer's specified maximum flow-rate greater than 0.6 m³/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m³/hour (under standard temperature (273 K (0 °C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

- i.1. Alloys with more than 25% nickel and 20% chromium by weight;
- i.2. Nickel or alloys with more than 40% nickel by weight;
- i.3. Fluoropolymers;
- i.4. Glass (including vitrified or enameled coatings or glass lining);
- i.5. Tantalum or tantalum alloys;
- i.6. Titanium or titanium alloys;
- i.7. Zirconium or zirconium alloys;
- i.8. Niobium (columbium) or niobium alloys.

i.9. Graphite or carbon-graphite;

i.10. Ceramics; or

i.11. Ferrosilicon.

j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000 °C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

- j.1. Alloys with more than 25% nickel and 20% chromium by weight;
- j.2. Nickel or alloys with more than 40% nickel by weight; or
- j.3. Ceramics.

Technical Note 1: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

Technical Note 2: The metal alloys in 2B350 are those containing a higher percentage by weight of the stated metal than of any other element.

* * * * *

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B351 is amended by revising the ECCN heading to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor, as follows, except those systems and detectors controlled by ECCN 1A004.c (see List of Items Controlled).

* * * * *

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A101 is

amended by revising the “Items” paragraph, in the “List of Items Controlled” section, to read as follows:

4A101 Analog computers, “digital computers” or digital differential analyzers, other than those controlled by 4A001 designed or modified for use in “missiles”, having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

- a. Rated for continuous operation at temperatures from below 228 K (−45 °C) to above 328 K (+55 °C); or
- b. Designed as ruggedized or ‘radiation hardened’.

Note: ‘Radiation hardened’ means that the component or equipment is designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 × 10⁵ rads (Si).

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A980 is amended by revising the “Items” paragraph, in the “List of Items Controlled” section, to read as follows:

4A980 Computers for fingerprint equipment, n.e.s.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

The list of items controlled is contained in the ECCN heading.

Note: 4A980 does not control equipment limited to one finger and designed for user authentication or access control.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A994 is amended by revising the “Items” paragraph, in the “List of Items Controlled” section, to read as follows:

4A994 Computers, “electronic assemblies”, and related equipment not controlled by 4A001 or 4A003, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

Note 1: The control status of the “digital computers” and related equipment described in 4A994 is determined by the control status of other equipment or systems provided:

a. The “digital computers” or related equipment are essential for the operation of the other equipment or systems;

b. The “digital computers” or related equipment are not a “principal element” of the other equipment or systems; and,

N.B. 1: The control status of “signal processing” or “image enhancement” equipment specially designed for other equipment with functions limited to those required for the other equipment is determined even if it exceeds the “principal element” criterion.

N.B. 2: For the control status of “digital computers” or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The “technology” for the “digital computers” and related equipment is determined by 4E.

a. Electronic computers and related equipment, and “electronic assemblies” and specially designed components therefor, rated for operation at an ambient temperature above 343 K (70 °C);

b. “Digital computers”, including equipment of “signal processing” or image enhancement”, having an “Adjusted Peak Performance” (“APP”) equal to or greater than 0.0128 Weighted TeraFLOPS (WT);

c. “Electronic assemblies” that are specially designed or modified to enhance performance by aggregation of processors, as follows:

- c.1. Designed to be capable of aggregation in configurations of 16 or more processors;
- c.2. [Reserved];

Note 1: 4A994.c applies only to “electronic assemblies” and programmable interconnections with a “APP” not exceeding the limits in 4A994.b, when shipped as unintegrated “electronic assemblies”. It does not apply to “electronic assemblies” inherently limited by nature of their design for use as related equipment controlled by 4A994.k.

Note 2: 4A994.c does not control any “electronic assembly” specially designed for a product or family of products whose maximum configuration does not exceed the limits of 4A994.b.

d. [Reserved];

e. [Reserved];

f. Equipment for “signal processing” or “image enhancement” having an “Adjusted Peak Performance” (“APP”) equal to or greater than [0.0128] Weighted TeraFLOPS WT];

g. [Reserved];

h. [Reserved];

i. Equipment containing “terminal interface equipment” exceeding the limits in 5A991;

j. Equipment specially designed to provide external interconnection of “digital computers” or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A994.j does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, “network access controllers” or “communication channel controllers”.

k. “Hybrid computers” and “electronic assemblies” and specially designed

components therefor containing analog-to-digital converters having all of the following characteristics:

- k.1. 32 channels or more; and,
- k.2. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D993 is amended by revising the ECCN heading and by revising paragraphs (b) and (c) of the “Items” paragraph, in the “List of Items Controlled” section, to read as follows:

4D993 “Program” proof and validation “software”, “software” allowing the automatic generation of “source codes”, and operating system “software” not controlled by 4D003 that are specially designed for real time processing equipment (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

- b. “Software” allowing the automatic generation of “source codes” from data acquired on line from external sensors described in the Commerce Control List; or
- c. Operating system “software” specially designed for “real time processing” equipment that guarantees a “global interrupt latency time” of less than 20 microseconds.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E992 is amended by revising the “Related Controls” paragraph, in the “List of Items Controlled” section, to read as follows:

4E992 “Technology” other than that controlled in 4E001 for the “development”, “production”, or “use” of equipment controlled by 4A994 and 4B994, materials controlled by 4C994, or “software” controlled by 4D993 or 4D994.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: N/A

Related Definitions: * * *

Items:

* * * * *

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”, Part 1 Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended:

- a. By removing paragraph (b)(8) from the “Items” paragraph in the “List of Items Controlled” section;
- b. By removing and reserving paragraphs (c)(2) and (c)(4) of the “Items” paragraph in the “List of Items Controlled” section, and
- c. By revising the “Note” at the end of paragraph (c)(4) of the “Items” paragraph in the “List of Items Controlled” section, to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

- c. “Stored program controlled” * * *

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as “stored program controlled” switches.

- c.1. “Data (message) switching” equipment or systems designed for “packet-mode operation” and assemblies and components therefor, n.e.s.
- c.2. [Reserved];
- c.3. Routing or switching of ‘datagram’ packets;
- c.4. [Reserved]

Note: The restrictions in 5A991.c.3 do not apply to networks restricted to using only “network access controllers” or to “network access controllers” themselves.

* * * * *

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A995 is amended by revising the ECCN heading, to read as follows:

6A995 “Lasers” (see List of Items Controlled).

* * * * *

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D001 is amended by removing the ECCN reference “7A007,” from the second sentence of the “Related Controls” paragraph in the “List of Items Controlled” section.

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E001 is amended by removing the ECCN reference “7A007,” from the second sentence of the “Related Controls” paragraph in the “List of Items Controlled” section.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export

Control Classification Number (ECCN) 7E002 is amended by removing the ECCN reference “7A007,” from the second sentence of the “Related Controls” paragraph in the “List of Items Controlled” section.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E101 is amended by revising the “Related Controls” paragraph, in the “List of Items Controlled” section, to read as follows:

7E101 “Technology”, according to the General Technology Note for the “use” of equipment controlled by 7A001 to 7A006, 7A101 to 7A107, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, or 7D101 to 7D103.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: The “technology” related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: * * *

Items:

* * * * *

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9E101 is amended by revising the ECCN heading, to read as follows:

9E101 “Technology” according to the General Technology Note for the “development”, “production”, or “use” of commodities or software controlled by 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9C110, 9D101, 9D103, 9D104 or 9D105.

* * * * *

Dated: September 29, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–23289 Filed 10–3–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 6384]

Amendment to the International Arms Traffic in Arms Regulations: Eritrea

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: The Department of State is adding Eritrea to its regulations on prohibited exports and sales to certain countries as a result of its designation as a country not cooperating fully with antiterrorism efforts.

DATES: This rule is effective October 3, 2008.

FOR FURTHER INFORMATION CONTACT:

Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2804 or Fax (202) 261-8199; E-mail DTCResponseTeam@state.gov.

SUPPLEMENTARY INFORMATION: On May 14, the Deputy Secretary of State determined that six countries, Cuba, Eritrea, Iran, North Korea, Syria and Venezuela, are not cooperating fully with anti-terrorism efforts (73 FR 29172). As a result of this determination, Section 40A of the Arms Export Control Act, as amended (22 U.S.C. 2781), prohibits the sale or licensing for export of defense articles and defense services to those countries effective October 1. This rule adds Eritrea to the list of countries identified in 22 CFR 126.1(a).

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this amendment is not subject to the procedures in 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for Part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375.

■ 2. Section 126.1 is amended by revising paragraph (a) as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Liberia, and Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms

embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except § 123.17 of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this § 126.1.

* * * * *

Dated: September 25, 2008.

John C. Rood,

Acting Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E8-23575 Filed 10-3-08; 8:45 am]

BILLING CODE 4710-25-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA-HQ-OAR-2005-0159; FRL-8725-5]

RIN 2060-AP28

The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule): Revised Exceptional Event Data Flagging Submittal and Documentation Schedule To Support Initial Area Designations for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Exceptional Events Rule to provide a revised exceptional event data flagging and documentation schedule for ozone data that may be used for designations under the 2008 ozone national ambient air quality standards (NAAQS). The Exceptional Events Rule states that when EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, EPA may revise or set a new schedule for flagging data for those NAAQS. EPA recently revised the primary and secondary ozone NAAQS to protect public health and welfare; the revised standards became effective on May 27, 2008. Consistent with the process envisioned in the Exceptional Events Rule, this direct final action revises the dates for flagging data and submitting documentation regarding exceptional events under the revised ozone NAAQS. This revised schedule allows EPA to fully consider state requests for exceptional event concurrence prior to EPA making final designations.

DATES: The direct final rule is effective on December 22, 2008 without further notice, unless EPA receives adverse

comment by November 20, 2008. If EPA receives an adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0159, by one of the following methods:

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

- *E-mail:* a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2005-0159.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2005-0159.

- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334; Washington, DC. 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-2005-0159. 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 and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Link, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-5456; fax number: 919-541-0824; e-mail address: link.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline

- I. Why Is EPA Using a Direct Final Rule?
- II. Does This Action Apply to Me?
- III. What Should I Consider As I Prepare My Comments?
- IV. What Is the Availability of Related Information?
- V. What Is the Background for This Action?
- VI. What Is This Direct Final Rule?
- VII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer Advancement Act

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

L. Judicial Review

I. Why Is EPA Using a Direct Final Rule?

This action provides for a revised schedule to flag data and submit documentation related to exceptional events that influence ozone data which may affect designations under the recently revised ozone NAAQS. This action creates no additional regulatory requirements. We are publishing this direct final rule because we view this as a noncontroversial action and anticipate no adverse comment.

In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for this action to revise the schedule for flagging and documenting ozone exceptional events data if relevant adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives an adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

States are responsible for identifying air quality data that they believe warrant special consideration, including data affected by exceptional events. States identify such data by flagging (making a notation in a designated field in the electronic data record) specific values in the Air Quality System (AQS) database. States must flag the data and submit a justification that the data are affected by exceptional events if they wish EPA to consider excluding the data in determining whether or not an area is attaining the revised ozone NAAQS.

All states that include areas that could exceed the ozone NAAQS, and could therefore be designated as nonattainment for the ozone NAAQS, have the potential to be affected by this rulemaking. Therefore, this action applies to all states; to local air quality agencies to which a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and, to

Tribal air quality agencies where appropriate. The Exceptional Events Rule describes in greater detail to whom the Rule applies in 72 FR at 13562–13563 (March 22, 2007).

III. What Should I Consider as I Prepare My Comments?

A. Submitting CBI

Do not submit this information to EPA through <http://www.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.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. What Is the Availability of Related Information?

The official record for this rulemaking, as well as the public version, has been established under Docket ID No. EPA–HQ–OAR–2005–0159 (including comments and data

submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address provided in **ADDRESSES** at the beginning of this document.

V. What Is the Background for This Action?

The Exceptional Events Rule (Treatment of Data Influenced by Exceptional Events (72 FR 13560, March 22, 2007)) sets a general schedule for states to flag monitored data affected by exceptional events in AQS and for them to submit documentation to demonstrate that the flagged data were impacted by an exceptional event. Under this general schedule, a state must initially notify EPA that data have been affected by an exceptional event by July 1 of the year after the data are collected; this is accomplished by flagging the data in AQS. The state must also include an initial description of the event when flagging the data. In addition, the state is required to submit a full demonstration to justify exclusion of such data within three years after the quarter in which the data were collected, or if a regulatory decision based on the data (such as a designation action) is anticipated, the demonstration must be submitted to EPA no later than one year before the regulatory decision is to be made.

However, the rule also authorizes EPA to revise data flagging and documentation schedules for the initial designation of areas under a new or revised NAAQS. This general schedule, while appropriate for the period after initial designations have been made under a NAAQS, may need adjustment when a new or revised NAAQS is promulgated because until the level and form of the NAAQS have been promulgated a state would not have complete knowledge of the criteria for excluding data. In these cases the general schedule may preclude states from submitting timely flags and associated documentation for otherwise approvable exceptional events. This could, if not modified, result in some areas receiving a nonattainment designation when the NAAQS violations were legitimately due to exceptional events.

For example, EPA finalized new standards for ozone of 0.075 pounds per billion (ppb) on March 12, 2008, with an effective date of May 27, 2008. In accordance with Clean Air Act Section

107(b), state Governors must provide their recommendations to EPA by March 12, 2009, on designating areas as attainment, nonattainment, or unclassifiable with the new standards. States will base their recommendations on the three most recent years of quality-assured ozone data, which could be data collected between calendar years 2006–2008, or 2005–2007. EPA must complete final area designations for these new standards by March 12, 2010. EPA will base its designations decisions on the three most recent years of quality-assured air quality data for each area, which would be ozone data collected during calendar years 2007–2009 where states have submitted quality-assured data for calendar year 2009. However, in some cases the most recent complete data may cover 2006–2008 or 2005–2007. In this example, the general exceptional event flagging schedule for 2005 and 2006 data has already passed and the flagging deadline for exceptional events that occurred in 2007 would be July 1, 2008—approximately 33 days after the effective date of the revised NAAQS. In addition, the general schedule would require states to submit demonstrations for 2009 data influenced by exceptional events no later than March 12, 2009, one year before the final designation decisions. This is clearly not possible for air quality data collected from March 13, 2009 to December 31, 2009.

EPA is, therefore, using the authority provided in the Exceptional Events Rule at 40 CFR 50.14(c)(2)(v), to modify the schedule for data flagging and submission of demonstration for exceptional events data considered for initial designations under the 2008 revised ozone NAAQS.

VI. What Is This Direct Final Rule?

This direct final rule amends the Exceptional Events Rule by providing a revised exceptional event data flagging and documentation schedule regarding claimed exceptional events affecting ozone monitoring data that will be compared to the 2008 revised ozone NAAQS for the purpose of initial ozone designations. In some cases, EPA is extending the otherwise applicable deadline for states to flag data and submit documentation. In other cases, EPA is shortening (for this purpose only) the otherwise applicable schedule to assure that the exceptional events claims can be fully considered by EPA in the designations decisions.

For air quality data collected in the years 2005 through 2007, this revised schedule extends the general schedule for flagging data (and providing a brief initial description of the event) from

July 1 of the year following the year the data are collected, to December 31, 2008. For data collected in 2008, the revised schedule extends the general schedule for flagging data and providing a brief initial description of the event to March 12, 2009, to coincide with the deadline for state Governors to submit designation recommendations to EPA. The deadline for submitting to EPA a detailed demonstration to justify exclusion of data collected in 2005 through 2008 is also being set to March 12, 2009. The deadline for submitting to EPA flagged data with initial descriptions and a detailed demonstration to justify exclusion of data collected in 2009 is being set to January 8, 2010. For data collected in

2008 and 2009 this would give a state less time, but EPA believes still sufficient time, to decide what 2008 and 2009 data to flag, and would allow EPA to have access to the flags and supporting data in time for EPA to develop its own proposed and final plans for designations. (If EPA extends the designations date beyond March 2010 due to insufficient information, a new event flagging deadline and detailed documentation submission deadline will be published.) While the new deadlines for submission of a state's demonstration for data collected in 2009 is less than a year before the designation decisions would be made, EPA believes it is a reasonable approach between giving states a reasonable

period to prepare the justifications, and EPA a reasonable period to consider the information submitted by the state. With this direct final action EPA amends § 50.14(c)(2)(v) to add a tabular schedule of data submittal deadlines, by pollutant, for new or revised NAAQS standards. (PM_{2.5} data submittal schedules revised in March 2007 and presented in this table are for informational purposes only. EPA is not taking further comment on the PM_{2.5} data submittal schedule published in 72 FR 13560, March 22, 2007.) EPA anticipates providing amendments to the following table to add data submission schedules for new or revised NAAQS standards in the future.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging and initial description deadline	Detailed documentation submission deadline
PM _{2.5} /24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006.	2004–2006	October 1, 2007 ^a	April 15, 2008 ^a .
Ozone/8-Hr Standard (0.075 ppb) Promulgated March 12, 2008.	2005–2007 2008 2009	December 31, 2008 ^b March 12, 2009 ^b January 8, 2010 ^b	March 12, 2009 ^b . March 12, 2009 ^b . January 8, 2010 ^b .

^a These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

^b Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it is likely to raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, where burden is defined at 5 CFR 1320.3(b). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or tribal governments or the private sector.

Therefore, it does not impose an information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or tribal governments or the private sector. Thus, it does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

This direct final does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to EO 13045 (62 F.R. 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order

13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action modifies previously established deadlines under the Exceptional Events Rule.

I. National Technology Transfer Advancement Act

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It will neither increase nor decrease environmental protection.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of 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). This rule will be effective December 22, 2008.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before December 5, 2008. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 30, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth in the preamble, part 50 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.14 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) * * *

(v) When EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS: Table 1 provides the schedule for submission of flags with initial

descriptions in AQS and detailed documentation and the schedule shall apply for those data which will or may

influence the initial designation of areas for those NAAQS. EPA anticipates revising Table 1 as necessary to

accommodate revised data submission schedules for new or revised NAAQS.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging and initial description deadline	Detailed documentation submission deadline
PM _{2.5} /24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006.	2004–2006	October 1, 2007 ^a	April 15, 2008 ^a .
Ozone/8-Hr Standard (0.075 ppb) Promulgated March 12, 2008.	2005–2007 2008 2009	December 31, 2008 ^b March 12, 2009 ^b January 8, 2010 ^b	March 12, 2009 ^b . March 12, 2009 ^b . January 8, 2010 ^b .

^a These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

^b Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines only applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

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[FR Doc. E8–23520 Filed 10–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 34

[Docket No. CDC–2008–0002]

RIN 0920–AA20

Medical Examination of Aliens—Revisions to Medical Screening Process

AGENCY: Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

ACTION: Interim final rule with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the U.S. Department of Health and Human Services (HHS), is amending its regulations that govern medical examinations that aliens must undergo before they may be admitted to the United States. HHS/CDC is amending the definition of *communicable disease of public health significance*. HHS/CDC is also amending the provisions that describe the scope of the medical examination for aliens by incorporating a more flexible, risk-based approach, based on medical and epidemiologic factors. This approach will assist HHS/CDC in determining which diseases the medical screening, testing, and treatment of aliens should include in areas of the world that are experiencing unforeseen outbreaks of those diseases. In addition, HHS/CDC is updating the screening requirements for tuberculosis

to be consistent with current medical knowledge and practice.

These changes will reduce the health-security threat to the United States from emerging diseases without imposing an undue burden on either the aliens or the health-care system in U.S. resettlement communities.

DATES: The interim rule is effective on October 6, 2008. Interested parties must submit written comments on or before December 5, 2008. HHS/CDC will consider comments received after this period only to the extent practicable.

ADDRESSES: You may submit written comments, identified by Docket No. CDC–2008–0002, to the following address: Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, ATTN: Part 34 Comments, 1600 Clifton Road, NE., E03, Atlanta, GA 30333.

Comments will be available for public inspection from Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 1600 Clifton Road, NE., Atlanta, GA 30333.

Please call ahead to 1–866–694–4867, and ask for a representative in the Division of Global Migration and Quarantine to schedule your visit.

Comments are also available for viewing at the following Internet addresses: <http://www.cdc.gov/ncidod/dq> and <http://www.globalhealth.gov>. You may submit written comments electronically via the Internet at the following address: <http://www.regulations.gov>, or via e-mail to Part34publiccomments@cdc.gov.

To download an electronic version of the rule, please go to the following Internet address: <http://www.regulations.gov>.

FOR FURTHER INFORMATION, CONTACT: Stacy M. Howard, Division of Global

Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE., E03, Atlanta, GA 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION: The Preamble to this interim rule is organized as follows:

- I. Legal Authority
- II. Background
- III. Summary of Changes to 42 CFR Part 34
- IV. Revised Definition of *Communicable Disease of Public Health Significance*
- V. Revised Scope of Medical Examination
- VI. Updating Tuberculosis Screening Requirements
- VII. Urgent Need for Regulatory Change
- VIII. Analysis of Impacts
- IX. Paperwork Reduction Act of 1995
- X. References

I. Legal Authority

HHS/CDC is promulgating this rule under the authority of 42 U.S.C. 252 and 8 U.S.C. 1182 and 1222.

II. Background

Under section 212(a)(1) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(1)), any alien determined to have a specified health-related condition is inadmissible to the United States. Those aliens outside the United States with a specified health-related condition (see below) are ineligible to receive a visa and ineligible to be admitted into the United States. The grounds of inadmissibility for specified health-related conditions also pertain to aliens in the United States who are applying for adjustment of immigration status to that of a lawful permanent resident.

Aliens are currently inadmissible into the United States if they have a communicable disease of public health significance, defined as follows: Active tuberculosis, infectious syphilis,

gonorrhoea, infectious leprosy, chancroid, lymphogranuloma venereum, granuloma inguinale, and HIV infection.

Medical examinations, including a physical and mental evaluation, to determine whether an alien may have such a health-related condition, are authorized under section 232 of the INA (8 U.S.C. 1222). Under sections 212(a)(1) and 232 of the INA, and section 325 of the Public Health Service (PHS) Act (42 U.S.C. 252), the Secretary of Health and Human Services promulgates regulations to establish the requirements for the medical examination and to list the health-related conditions that make aliens ineligible for entry into the United States. The regulations, administered by HHS/CDC, are promulgated at 42 FR part 34.

As currently listed in § 34.1, the provisions in this part apply to the medical examination of (1) aliens outside the United States who are applying for an immigrant visa at an embassy or consulate of the United States; (2) aliens arriving in the United States; (3) aliens required by the U.S. Department of Homeland Security (DHS) [formerly required by the Immigration and Naturalization Service (INS)] to have a medical examination in connection with the determination of their admissibility into the United States; and (4) applicants in the United States who apply for adjustment of their immigration status to that of permanent resident.

Panel physicians, designated by consular officers of the U.S. Department of State, perform medical examinations abroad, and civil surgeons, designated by the U.S. Citizenship and Immigration Services, perform medical examinations for aliens who are already present in the United States. Aliens determined to have a communicable disease of public health significance may request a waiver to enter the United States under sections 212(d)(3)(a) and 212(g) of the INA (8 U.S.C. 1182(d)(3)(a) and 1182(g)).

Aliens are inadmissible if they are determined: (1) To have a communicable disease of public health significance; (2) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; (3) to have had a physical or mental disorder and a history of behavior associated with the disorder, which has posed a threat to the property, safety, or welfare of the alien or others and which is likely to recur or lead to other harmful behavior; or (4) to be a drug abuser or addict. In addition, except for certain adopted children 10 years of age or younger, any

alien who seeks admission as an immigrant, or seeks adjustment of immigration status to legal permanent resident, is inadmissible if the alien fails to present documentation of having received vaccination against mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B, hepatitis B and any other vaccination recommended by the Advisory Committee for Immunization Practices.

Annually, the U.S. Government admits more than 1,000,000 immigrants and refugees to reside permanently in this country. The majority arrives from Asia, Africa and Central and South America, regions with recently reported outbreaks of emerging, infectious diseases, including yellow fever, dengue, Ebola and Marburg hemorrhagic fevers and the H5N1 strain of highly pathogenic avian influenza. These regular outbreaks, many of which affect both urban and rural areas, and the movement of large population resettlements from these regions, highlight the serious threat to public health in the United States to which the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS) has to respond on very short notice.

In the recent past, the demographics of U.S.-bound refugees have shifted to populations that are at higher risk for communicable diseases. These newer groups of refugees have lower baseline rates of vaccination, higher rates of parasitic infections and more limited access to basic medical care and preventive health interventions before resettlement. Between 1996 and 2003, at least half of all arriving refugees were European. In 1998, 70 percent were European. Beginning in 2003, however, the numbers of refugees from Europe rapidly declined. In 2008, only three percent of all refugees arriving in the United States were European. At the same time, a larger proportion of refugees have come from countries with poorer economies, weaker health infrastructure, and limited access to basic medical care. As a result, these refugees have a higher incidence of major infectious diseases.

This demographic shift is one of the most important factors that have led to the substantial increase in the number and nature of outbreaks of communicable diseases that have affected refugee resettlements. These new populations bring new diseases but the diseases for which individuals are inadmissible into the United States have remained much the same as at the end of the nineteenth century.

The highest rates of tuberculosis among immigrants and refugees are for those born in sub-Saharan African and Southeast Asian countries, with rates of at least 250 cases per 100,000. By comparison, the rate in the United States is fewer than five cases per 100,000. Overall, approximately one-third of the world's population has the infection, and over 50 percent of TB cases in the United States are in foreign-born residents.

Panel physicians miss up to 67 percent of tuberculosis (TB) cases based on the current scope of medical examination requirements. Implementation of these revisions to the regulations would ensure the methods for screening and testing TB used during the medical examination of aliens reflect the most current medical practice.

The resettlement of these populations, many of which are coming from high-risk countries, is a strong argument for an immediate implementation of the changes in the list of communicable diseases of public health significance to reduce the potential of emerging disease threats in this higher-risk caseload. Urgent changes to this list are needed to prevent importing communicable diseases into our country. The current regulations do not address emerging and re-emerging diseases in immigrant or refugee populations. HHS is adding diseases to the communicable diseases of public health significance that better reflect the true threats that our Nation faces, including cholera, diphtheria, plague, smallpox, yellow fever, viral hemorrhagic fevers, and severe acute respiratory syndrome (SARS). These diseases currently exist in the list of quarantinable, communicable diseases defined by Presidential Executive Order, but do not appear on the list of communicable diseases of public-health significance. These diseases cause severe illness and death in regions of the world that are home to large numbers of immigrants and refugees bound for the United States.

In addition, the revision to part 34 is consistent with relevant provisions of the revised International Health Regulations (2005), which came into force in July of 2007.

HHS/CDC also issues technical instructions and provides technical consultation and guidance to panel physicians and civil surgeons who conduct the medical examinations of aliens. The HHS/CDC *Technical Instructions for Medical Examination of Aliens*, including the most current updates, which panel physicians and civil surgeons must follow in accordance with these regulations, are

available to the public on the HHS/CDC Web site, located at the following Internet address: <http://www.cdc.gov/ncidod/dq/technica.htm>. HHS/CDC will also post and maintain a list of all medical conditions and locations for which additional screening requirements are in effect pursuant to this rule. This list will be available at the same Internet address: <http://www.cdc.gov/ncidod/dq/technica.htm>, and <http://www.globalhealth.gov>.

III. Summary of Changes to 42 CFR Part 34

HHS/CDC is amending the definition of a *communicable disease of public health significance*. Current communicable diseases of public health significance are: active tuberculosis, infectious syphilis, gonorrhea, infectious leprosy, chancroid, lymphogranuloma venereum, granuloma inguinale, and HIV infection.

The definition of a *communicable disease of public health significance* in this rule remains as those diseases currently listed in § 34.2(b), plus the addition of (1) quarantinable diseases designated by Presidential Executive Order, and (2) those diseases that meet the criteria of a public health emergency of international concern which require notification to the World Health Organization (WHO) under the revised International Health Regulations of 2005. A delay in implementing these updates to Part 34 poses a risk of further severe illness for refugees and immigrants as they move into receiving U.S. communities and presents American taxpayers with elevated medical costs. Updating the list of communicable diseases of public health significance will diminish complex and costly measures such as vaccination, chemoprophylaxis and isolation, and lessen illness and death among the affected migrating populations.

The following is a section-by-section analysis of proposed changes:

Section 34.2 Definitions

The revision updates the definition provided in § 34.2(b) for a *communicable disease of public health significance* to include two new categories of disease. The first category, added as § 34.2(b)(2), is the quarantinable, communicable diseases specified by the President in Executive Order, as provided under Section 361(b) of the Public Health Service Act. The second category, added as § 34.2(b)(3), is any communicable disease that requires notification to the World Health Organization as an event that may constitute a public health emergency of international concern, pursuant to the

revised International Health Regulations of 2005.

Section 34.3 Scope of Examinations

HHS/CDC is publishing section 34.3 in its entirety for clarity, including republication of some provisions that are unchanged. HHS/CDC has revised section 34.3 to include screening and testing for the updated list of communicable diseases of public health significance, as defined in § 34.2(b). HHS/CDC has also revised section 34.3 to require additional medical screening and testing using a more flexible risk-based approach for those medical examinations performed outside of the United States. HHS/CDC has also revised the specific requirements concerning the required evaluation for tuberculosis.

The U.S. Department of Homeland Security (DHS) currently is the entity responsible for administering the immigration authority and functions previously administered by the Immigration and Naturalization Service (INS), which was within the U.S. Department of Justice. The revised rule text changes the reference to INS in existing § 34.3(b)(2)(i) to U.S. Department of Homeland Security in new § 34.3(e)(3)(i).

Specific Changes to the Scope of the Medical Examination, and the Risk-Based Approach

The title of § 34.3(b) has changed to *Scope of all medical examinations*, and provides that all medical examinations will include a general physical examination and medical history, evaluation for tuberculosis, serologic testing for syphilis and HIV, and also a physical examination and medical history for diseases specified in §§ 34.2(b)(1) and 34.2(b)(4) through 34.2(b)(10). The unindented paragraph currently at the end of § 34.3(a) has been moved to § 34.3(b)(2).

The title of § 34.3(c) has been changed to *Additional medical screening and testing for examinations performed outside of the United States* and provides that HHS/CDC may require additional screening and testing for medical examinations performed outside the United States for diseases specified in §§ 34.2(b)(2) and 34.2(b)(3) by applying the risk-based medical and epidemiologic factors listed in § 34.3(d)(2). It provides that such examinations shall be conducted in a defined population, in a geographic region or area outside the United States, for a period of time as determined by HHS/CDC. Additional medical screening and testing shall include a medical interview, physical

examination, laboratory testing, radiologic exam, or other diagnostic testing as determined by HHS/CDC. Section 34.3(c)(4) and (5) indicate that additional medical screening and testing will continue until HHS/CDC determines such activity is not necessary, based on medical and epidemiologic factors, and that HHS/CDC will provide medical examiners with information pertaining to all additional screening and testing requirements, and will also post the information on the HHS/CDC Web site.

Section 34.3(d) is entitled *Risk-based approach*, and provides the medical and epidemiological factors that HHS/CDC will use to determine whether a disease as specified in § 34.2(b)(3)(ii) is a *communicable disease of public health significance*, which diseases in §§ 34.2(b)(2) and (b)(3) merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening. These factors include the seriousness of the disease's public health impact; whether the emergence of the disease was unusual or unexpected; the risk of the spread of the disease to the United States; the transmissibility and virulence of the disease; the impact of the disease at the geographic location of medical screening; and other specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States.

Specific Changes to Tuberculosis Screening Requirements

HHS/CDC has revised § 34.3 to require testing for tuberculosis of children under the age of 15 years old when they have symptoms of tuberculosis, a history of tuberculosis, or possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period. With regard to additional testing requirements for an applicant that has a radiograph that indicates an abnormality suggestive of tuberculosis disease, HHS/CDC has revised § 34.3 to require additional testing for tuberculosis. Specific changes regarding the required evaluation for tuberculosis appear below.

Section 34.3(b), entitled *Persons subject to requirement for chest x-ray examination and serologic testing* is now § 34.3(e). The revision adds § 34.3(e)(2)(ii) to include a chest x-ray examination for applicants under 15 years of age if they have symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed

environment for a prolonged period. The paragraph describing requirements for tuberculin skin test (TST) examination is now § 34.3(e)(3), and has been renamed *Immune response to Mycobacterium tuberculosis antigens* to reflect updated, current equivalent tests that are increasingly used in clinical settings and may eventually be used as an alternative to the tuberculin skin test for refugee and immigrant screening. The Quantiferon-TB Gold (QFT-G) test is one recommended method for screening for tuberculosis in clinical practice in most circumstances instead of the TST. The incorporation of Immune Globulin Release Assays (IGRAs), which include QFT-G, is under consideration by CDC for screening for tuberculosis in aliens. This change will insure that current, updated medical technology will be used, as appropriate, by panel physicians and civil surgeons conducting the medical examinations. This section also includes the addition of § 34.3(e)(3)(iii) which requires a tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, for applicants outside of the United States who are required to have a medical examination and, if indicated, a chest x-ray examination, if the applicant is of sufficient age to be considered contagious.

Section 34.3(e)(3)(iv) requires both a tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, and a chest x-ray examination for any applicant outside of the United States, regardless of age, if the applicant has symptoms of tuberculosis, a history of tuberculosis, or possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period.

Section 34.3(e)(4), entitled *Additional testing requirements*, indicates that all applicants subject to the chest x-ray examination and for whom the radiograph shows an abnormality suggestive of tuberculosis disease must undergo additional testing for tuberculosis. This change allows for the use of the most current testing procedures for tuberculosis disease.

References to the Attorney General in existing §§ 34.3(b)(4) and (e) are changed to the Secretary of Homeland Security in new §§ 34.3(e)(5) and (h) to reflect the creation of DHS in 2003 and its assumption of applicable authorities and responsibilities. Reference to *INS* in existing § 34.3(b)(2)(i) is changed to *U.S. Department of Homeland Security* in new § 34.3(e)(3)(i). These ministerial corrections are the only amendments to

these sections which are otherwise republished unchanged.

IV. Revised Definition of Communicable Disease of Public Health Significance

As stated in Section 212(a)(1) of the INA, aliens are inadmissible into the United States if they are determined to have a specified health condition, which includes a *communicable disease of public health significance*. Currently, medical examinations require the screening of all aliens subject to these requirements for all listed communicable diseases of public health significance. Regulations have historically defined the term *communicable disease of public health significance* by listing specific diseases. The current definition in 42 CFR 34.2(b) includes chancroid, gonorrhea, *granuloma inguinale*, human immunodeficiency virus (HIV) infection, infectious leprosy, *lymphogranuloma venereum*, infectious-stage syphilis, and active tuberculosis.

Recent experience has demonstrated that a fixed list of diseases does not allow HHS/CDC the flexibility it needs to rapidly respond to unanticipated emerging or re-emerging outbreaks of disease. Rather, HHS/CDC requires an approach based on potential risks and consequences instead of a static list that does not reflect the potential for future outbreaks of novel diseases. National and international health agencies have recently developed guidelines for defining diseases of public health significance that threaten global health security and require an urgent response. This guidance provides the framework to update the list of communicable diseases of public health significance for the United States to screen and test aliens during disease outbreaks in real time.

HHS/CDC is adding the following two disease categories to the current list of communicable diseases of public health significance:

(1) Quarantinable, communicable diseases specified by Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act; and

(2) Any communicable disease that requires notification to the World Health Organization as an event that may constitute a public health emergency of international concern, pursuant to the revised International Health Regulations of 2005.

Quarantinable Communicable Diseases Specified by Presidential Executive Order, as Provided Under Section 361(b) of the Public Health Service Act

Section 361 of the Public Health Service Act authorizes the Secretary of HHS to enact rules and regulations for preventing the introduction, transmission, and spread of communicable diseases from foreign countries into the United States, and from one State or possession into another. Executive Order 13295 of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005, contains the most recent list of quarantinable, communicable diseases, and includes the following: Cholera, yellow fever, plague, viral hemorrhagic fevers, diphtheria, infectious tuberculosis, smallpox, severe acute respiratory syndrome (SARS), and influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic (pandemic influenza). HHS/CDC is adding diseases listed by Presidential Executive Order to the definition of *communicable diseases of public health significance*, subject to screening and testing requirements outlined in the section on the scope of examinations.

Any Communicable Disease That Requires Notification to the World Health Organization as an Event That May Constitute a Public Health Emergency of International Concern, Pursuant to the Revised International Health Regulations of 2005

In May 2005, the World Health Assembly adopted the revised International Health Regulations (IHR (2005)). These regulations entered into force for most of the Member States of the WHO in June 2007 and for the U.S. in July 2007. The purpose and scope of the IHR (2005) are to prevent, protect against, control and provide a public health response to the international spread of disease, while minimizing interference with world travel and trade. Annex 2 of the IHR (2005) contains an algorithm for identifying a *public health emergency of international concern*, and can be located at the following Internet address: http://www.who.int/gb/ghs/pdf/IHR_IGWG2_ID4-en.pdf.

The IHR (2005) define a *public health emergency of international concern* as an extraordinary event which is determined: (i) To constitute a public health risk to other [Member] States through the international spread of disease and (ii) to potentially require a coordinated international response. Under the IHR (2005), Member States must notify the World Health

Organization of any disease event that fulfills the criteria presented in the three categories of the algorithm in Annex 2. The definition in the revised part 34 rule text is intended to capture those diseases that require notification by any country to the WHO under the IHR (2005) and determined to be an event that may constitute a public health emergency of international concern. The revised part 34 rule text references IHR (2005) category (1), below, in § 34.2(b)(3)(i), and categories (2) and (3), below, together in § 34.2(b)(3)(ii).

(1) Diseases Listed in the IHR (2005) for Which a Single Case Requires Notification Through the Use of the IHR (2005) Algorithm

Annex 2 of the IHR (2005) specifies that smallpox, poliomyelitis from wild-type poliovirus, pandemic influenza and severe acute respiratory syndrome (SARS) are diseases with serious public health impact, and that a single case, irrespective of context, requires immediate notification to the WHO. HHS/CDC is adding diseases listed in this category to the definition of a *communicable disease of public health significance*, subject to screening and testing requirements outlined in the section on the scope of examinations.

The impact of the SARS outbreak demonstrates the importance of using the IHR (2005) algorithm to quickly detect and identify emerging and re-emerging pathogens in this category. SARS coronavirus is a droplet-spread illness that rapidly emerged as a global threat in 2003, caused more than 8,000 cases and 800 deaths, and required isolation and quarantine control measures. Although now contained, the disease (or one similar to it) could re-emerge at any time. The use of the IHR (2005) process for disease notification to the WHO will ensure the earliest possible protection of citizens in the United States through medical screening of a pathogen like SARS when the next outbreak occurs. Smallpox, which causes high mortality and morbidity, is another disease in this category. Because smallpox is now successfully eradicated, it poses an ongoing threat as a bioterrorism agent.

(2) Other Diseases Listed in the IHR (2005) for Which Notification Is Required Through the Use of the IHR (2005) Algorithm

In addition to the single-case notification diseases, Annex 2 indicates that an event that involves the following diseases shall always lead to the use of the IHR (2005) algorithm to determine whether the disease occurrence amounts to a public health emergency of

international concern, because these diseases have demonstrated the ability to cause serious public health impact and to spread rapidly internationally:

- Cholera;
- Pneumonic plague;
- Yellow fever;
- Viral hemorrhagic fevers (Ebola, Lassa, Marburg);
- West Nile fever; and
- Other diseases that are of special national or regional concern (e.g. dengue fever, Rift Valley fever, and meningococcal disease).

HHS/CDC is adding diseases listed in this category to the definition of a *communicable disease of public health significance*, subject to screening and testing requirements and risk-based factors outlined in the section on the scope of examinations.

Ongoing threats in this category include Ebola hemorrhagic fever, a severe, often fatal disease, easily spread through close personal contact. An outbreak of Ebola in the Democratic Republic of the Congo, confirmed in September 2007, resulted in 26 laboratory-confirmed cases of illness as of October 2007. There have been a total of 264 suspected cases, and Ebola is believed to have killed up to 187 people over eight months. A subsequent outbreak of Ebola in the Republic of Uganda produced 149 suspect cases and killed 37 people. Cholera, which can cause severe diarrhea and death, also continues to be active. From August 2007 through November 2007, an outbreak spread throughout Iraq and caused over 4500 cases of illness and 23 deaths.

(3) Other Unspecified Diseases That Require Notification Through the Use of the IHR (2005) Algorithm

Annex 2 also refers to any event of potential international health concern, including those of unknown causes or sources, and those that involve events or diseases, other than the IHR (2005) single-case notifiable and other specified notifiable diseases (listed in (1) and (2) above), that lead to use of the IHR (2005) algorithm. HHS/CDC is adding diseases listed in this category to the definition of a *communicable disease of public health significance*, subject to screening and testing requirements and risk-based factors outlined in the section on scope of examinations. Addition of this last category to the definition of diseases of public health significance allows HHS/CDC to respond rapidly to emerging disease threats in a way that adding specific diseases to a fixed list does not.

Once HHS/CDC acknowledges an event from the IHR (2005) algorithm as

a disease of public health significance, HHS/CDC will immediately advise the physicians who conduct medical examinations of the additional medical screening or testing required for the identified disease(s) via electronic notification, coordination with embassies, consulates and the International Organization for Migration, by publication on the HHS/CDC Web site, and publication of a notice in the **Federal Register**. HHS/CDC will also provide any required disease notifications to appropriate DOS bureaus. HHS/CDC will also maintain a current list of diseases and locations subject to additional medical screening and will update addenda to the *Technical Instructions for Medical Examination of Aliens* regarding these diseases, available to the public on the HHS/CDC Division of Global Migration and Quarantine Web site, located at the following Internet address: <http://www.cdc.gov/ncidod/dq/technica.htm>, and also at <http://www.globalhealth.gov>.

The HHS/CDC Division of Global Migration and Quarantine is the current name of the former Division of Quarantine used in existing § 34.3(f), and section 34.3(i) of the revised rule text uses the correct name. The section is otherwise republished unchanged.

V. Revised Scope of Medical Examination

HHS/CDC is amending the scope of the medical examination in 42 CFR 34.3 to allow greater agility to respond to significant outbreaks of communicable diseases of public health significance for applicants examined in geographic locations where these diseases exist, and for which importation into the United States would pose a threat. HHS/CDC believes a risk-based approach that uses medical and epidemiologic factors to detect additional diseases of public health significance provides a flexible, fair and practical means to address infectious disease threats among at-risk aliens without placing an undue burden on other applicants.

Beginning on the effective date of this rule, HHS/CDC will also make a distinction between the medical examinations performed for aliens outside the United States, and those performed for aliens already in the United States who are applying for adjustment of status to that of permanent resident, in that the risk-based approach to detect additional diseases of public health significance will apply only to medical examinations outside the United States and only in those geographic areas where the risk is high. Applicants already within the United States who apply for adjustment

of immigration status will not be subject to additional screening or testing using the risk-based approach. Disease outbreaks in aliens who are within the United States primarily fall under the jurisdiction of state and local public health authorities. For both groups of aliens, those applying for status adjustment from within the United States and those applying for admission from outside the United States, the medical screening examination will continue to consist of a general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis and HIV. In addition, under the new risk-based approach, HHS/CDC may require aliens outside the United States applying for U.S. immigration to undergo additional screening and testing for specific communicable diseases of public health significance.

Quarantinable, Communicable Diseases Specified by Presidential Executive Order as Provided Under Section 361(b) of the Public Health Service Act

Medical screening for these diseases will be achieved through physical examination and medical history. Accomplish HHS/CDC may require additional screening or testing for these diseases for aliens receiving medical examinations at the specific location or area where outbreaks of the disease or diseases may be occurring. This additional screening and testing will involve applying the defined risk-based approach by using medical and epidemiologic factors (shown below in this section.)

This change addresses diseases in immigrant and refugee populations (and, in extreme cases, non-immigrant aliens) outside the United States, and ensures the lists of quarantinable diseases and inadmissible conditions remain consistent. Whenever this Executive Order is amended in the future to add additional diseases, HHS/CDC will be able to immediately begin testing and screening for these diseases.

Any Communicable Disease That Requires Notification to the World Health Organization as an Event That May Constitute a Public Health Emergency of International Concern, Pursuant to the Revised International Health Regulations of 2005

(1) Diseases Under the IHR (2005) for Which a Single Case Requires Notification to WHO as an Event That May Constitute a Public Health Emergency of International Concern

HHS/CDC will consider all the diseases in this category, including

diseases included by WHO in the future, as communicable diseases of public health significance and subject to medical screening through physical examination and medical history. HHS/CDC will also consider imposing additional screening and testing, as determined by the specific circumstances of the event, for diseases in this category that meet requirements of the risk-based approach composed of medical and epidemiologic factors (shown below in this section) and for which HHS/CDC determines a threat exists for importation into the United States, and that may potentially affect the health of the American public.

(2) Other Diseases That Require Notification to WHO as an Event That May Constitute a Public Health Emergency of International Concern Through the Use of the IHR (2005) Algorithm (Includes Categories (2) and (3) of the IHR (2005) Algorithm Referenced Previously in Section IV—Revised Definition of a Communicable Disease of Public Health Significance)

HHS/CDC will consider the diseases in this category as communicable diseases of public health significance and subject to medical screening through physical examination and medical history if they meet one or more of the risk-based criteria of medical and epidemiologic factors (shown below in this section), and HHS/CDC determines (1) a threat exists for importation into the United States, and (2) such diseases may potentially affect the health of the American public. HHS/CDC will also consider imposing additional screening and testing for diseases in this category, as determined by the specific circumstances of the event.

Risk-Based Approach of Medical and Epidemiologic Factors

HHS/CDC will determine which diseases merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening, by applying a risk-based approach that takes into account the following medical and epidemiologic factors: (a) The seriousness of the disease's public health impact; (b) whether the emergence of the disease was unusual or unexpected; (c) the risk of the spread of the disease to the United States; (d) the transmissibility and virulence of the disease; (e) the impact of the disease at the geographic location of medical screening; and (f) other, specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States. HHS/CDC will consider diseases identified through the

International Health Regulations algorithm (other than diseases for which a single case requires notification) as communicable diseases of public health significance when they meet one or more of the criteria listed above, and for which HHS/CDC determines (A) a threat exists for importation into the United States, and (B) such diseases may potentially affect the health of the American public.

This risk-based approach will facilitate a meaningful public health response to existing and emerging threats, without overwhelming the entire health system with needless testing. The changes to the scope of the examination will allow HHS/CDC to tailor testing requirements to those areas where the severity of communicable diseases of public health concern are actually affecting populations at the time of the medical examination.

When HHS/CDC requires screening for additional communicable diseases of public health significance for applicants from specific geographic areas, HHS/CDC may require additional screening, including additional medical interviews, a physical examination, laboratory testing, radiologic exams, or other diagnostic procedures.

Screening and testing for newly identified diseases as a part of the list of communicable diseases of public health significance will continue until HHS/CDC determines the particular situation does not warrant this designation, based on factors such as the results of disease investigations; response efforts; the effectiveness of containment and control measures; and the current determination or termination of the public health emergency of international concern by the Director General of the WHO.

HHS/CDC will provide physicians the technical instructions regarding the required additional medical screening and testing to perform for a disease as part of the examination. In most instances, additional medical screening and testing may only consist of epidemiologic questions and further physical examination relating to the disease. HHS/CDC will also update the *Technical Instructions for Medical Examination of Aliens*, as needed, regarding the additional medical screening and testing protocol for a disease, and this information will also be immediately available to the public on the HHS/CDC Division of Global Migration and Quarantine Web site, located at the following Internet address: <http://www.cdc.gov/ncidod/dq/technica.htm>; and at <http://www.globalhealth.gov>. A listing of current documents regarding the

additional medical screening and testing protocol for specific diseases will also be available on the HHS/CDC Web site.

VI. Updating Tuberculosis Screening Requirements

HHS/CDC is amending the medical examination rule for aliens by updating the screening requirements for tuberculosis, to be consistent with current medical knowledge and practice. HHS/CDC is amending 42 CFR 34.3(b) by revising the requirement for a chest X-ray examination to include applicants under the age of fifteen years old, when there is reason to suspect tuberculosis infection. The practical effect of this change is to expand this testing protocol to alien applicant children under the age of 15, when medically appropriate. This change will allow HHS/CDC the flexibility to ensure the tuberculosis screening and testing methods used for medical examination of aliens are current and effective.

HHS/CDC is amending § 34.3(b)(1)(v) by adding the expanded tuberculin skin test requirement, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, to the exceptions that may be authorized for good cause upon application approved by the Director of CDC.

HHS/CDC is amending § 34.3(b)(2) to indicate that any alien applicant outside the United States shall have a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens and, if indicated, a chest X-ray examination if the applicant is of sufficient age to be considered contagious. Additionally, any alien applicant outside the United States, regardless of age, shall have both a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, and a chest X-ray examination if the applicant has symptoms of tuberculosis disease, has a history of tuberculosis, or has exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period. HHS/CDC is amending this section to make it consistent with current medical knowledge and practice.

HHS/CDC is amending § 34.3 by adding a new provision, entitled *Additional Testing Requirements*, with the following rule text: All applicants subject to the chest X-ray examination requirement and for whom the radiograph shows an abnormality suggestive of tuberculosis disease shall be required to undergo additional testing for tuberculosis disease.

The current, outdated rule requires sputum smears for anyone with signs, or x-ray findings, suggestive of tuberculosis. Current medical guidelines require mycobacterial culture, which is three times as sensitive as a sputum smear for detecting active tuberculosis.

HHS/CDC is also updating language in 34.3(e) and (f) to replace x-ray film with x-ray image. This change is needed to reflect updated radiology technology such as CD-R and laser-printed x-ray formats. Language concerning chest x-rays being attached to the alien's visa in such a manner to be readily detached at the U.S. port of entry has also been deleted since x-rays are not required to be presented at the port of entry.

VII. Urgent Need for Regulatory Change

The U.S. Department of State proposed 80,000 refugee admissions for Fiscal Year 2008 under the requirements of Section 207(e)(1)–(7) of the Immigration and Nationality Act. This is greater than a ten percent increase from FY 2007 projections. As of June 2008, approximately 35,000 refugees have been resettled, and around 27,000 still expected by the end of September 2008. Major diseases of concern in these incoming refugee populations include multi-drug-resistant tuberculosis (MDR TB), measles, highly pathogenic avian influenza, and cholera. The potential for transmitting viral hemorrhagic fevers, such as Ebola and Marburg, also exists among some of the African populations being resettled. In addition, several vector-borne (animal-transmitted) diseases including chikungunya, dengue and, possibly, Rift Valley fever, are circulating in refugee camps with populations bound for the United States. Vectors (i.e. mosquitoes) prevalent in the United States are capable of widely spreading these diseases.

Allowing serious diseases to enter into the United States can result in significant harm to both the American public and American business. The existing definition of *communicable diseases of public health significance* and the evaluation criteria for tuberculosis in the current regulation are outdated and no longer in keeping with current medical knowledge. Therefore, immediate changes are needed to improve the ability of the United States to prevent the introduction and spread of infectious diseases that are currently causing severe illness and death abroad. The scope of examination for medical screening is also outdated, and needs immediate changes to allow for medical screening by using a risk-based approach that considers medical and

epidemiologic factors. The current regulations do not have a process for allowing HHS/CDC to adapt rapidly to new health threats, and they reference outdated public health practices that do not take advantage of the latest biomedical knowledge and epidemiologic data. Changes are needed now to reduce the potential for significant harm from emerging diseases and outbreaks of infectious diseases that currently threaten U.S. health security.

Newly emerging communicable disease threats are arising with increased frequency because of multiple factors, such as increases in global travel and mobility, migration patterns, human susceptibility to novel infections, and microbial adaptation and mutation, as cited in the latest report of the U.S. Institute of Medicine on emergence of infectious diseases, *Microbial Threats to Health: Emergence, Detection and Response*, National Academies Press, 2003. Infectious disease outbreaks (e.g., SARS in 2003) or potential threats like pandemic influenza are evidence that virulent diseases with short incubation periods can be carried over a border before signs of illness can be observed. Additionally, when disease outbreaks occur in refugees or immigrants coming to the United States, public health control actions such as vaccination, treatment, chemoprophylaxis and isolation must be implemented immediately to prevent the importation of disease into the United States.

Annually, approximately 1,000,000 immigrants and refugees enter the United States to reside here permanently. The majority arrive from Asia, Africa and Central and South America, regions with recently reported outbreaks of emerging infectious diseases, including yellow fever, dengue and the H5N1 strain of avian influenza. The 50,000–80,000 refugees who resettle in the United States each year are the most vulnerable populations, as they often come from difficult environmental conditions with limited water, sanitation and health care. Living conditions for many refugees include poor to nonexistent health and public health infrastructure; thus, it is difficult to have adequate knowledge of their current and potential medical problems. In refugee camps, disease surveillance and laboratory resources are often limited, which increases the difficulty of maintaining good health and preventing outbreaks of infectious diseases. Historically, outbreaks of communicable diseases have occurred frequently in refugee camps. These regular outbreaks, and the inherent nature of large population resettlements, highlight the health threats to which

HHS/CDC has to respond on very short notice.

The shift in the demographics of refugee and immigrant populations bound for the United States and consequent changes in their health risks mandate a change in the definition of a *communicable disease of public health significance*, because of the current uncertainty of global disease trends. This demographic shift is the single most important cause of the substantial increase in the number and nature of outbreaks of communicable diseases among immigrants who are resettling into the United States.

HHS/CDC is unable to forecast constantly changing migration patterns, and thus must have the flexibility to respond swiftly as unpredictable, problematic health and humanitarian crises arise. The current definition of a *communicable disease of public health significance* does not adequately accommodate the demographic shifts that have dramatically altered the pattern of diseases among new arrivals in the United States.

HHS/CDC has found that the origins of U.S.-bound populations are increasingly unpredictable, and these populations increasingly originate in areas with challenging and unpredictable communicable diseases of public health significance. Immigration statistics (<http://www.dhs.gov/ximgtn/statistics>) show more U.S.-bound refugees and immigrants now come from regions with a higher risk for communicable diseases. In recent years, the disease burden to the United States has increased as the proportion of refugees resettling from Africa and Asia has increased (<http://www.state.gov/g/prm/refadm/rls/85970.htm>). As an example, the proportion of refugees resettled to the United States from Africa have increased in the recent past. African refugee arrivals have averaged 16,000 per year since FY 2005. These newer groups of refugees have lower baseline rates of vaccination, higher rates of malaria and other parasitic infections (unfamiliar to most American clinicians), and very limited access to basic medical care and preventive health interventions before resettlement. Failure to address these conditions adequately because of the outdated definition of *communicable diseases of public health significance* has meant that HHS/CDC has had to respond to at least 25 outbreaks of disease among U.S.-bound refugees since 2004.

Major outbreaks of dangerous, communicable diseases around the world in 2007 included Ebola in the Democratic Republic of the Congo in September, and in Uganda in December;

cholera in Iraq in August; yellow fever in Togo in February, and in Brazil and Paraguay in December; and 85 animal-to-human cases of the highly pathogenic H5N1 strain of avian influenza throughout the year. These outbreaks have been of diseases that do not naturally occur in the United States, or occur rarely, which could result in disability and death in U.S.-bound immigrants and refugees and secondary spread in the communities in the United States that receive immigrants.

The WHO classifies yellow fever as a disease that has demonstrated the ability to cause serious public health impact, and is a good example of a threat to the health security of the United States. The Ministry of Health in Togo reported an outbreak of yellow fever to the WHO that lasted from December 2006 through February 2007. Moreover, Sudan, Senegal, Mali, Côte d'Ivoire, Burkina Faso, Guinea, Brazil, Peru, Paraguay, Bolivia and Argentina have also reported ongoing outbreaks of yellow fever to the WHO. In total, the WHO considers 46 countries, including 33 African countries and 11 countries in Central and South America, to be currently at risk of yellow fever. Substantial numbers of U.S.-bound immigrants and refugees originate from areas in which yellow fever is endemic, and therefore pose a risk of the importation of this disease. Since mosquitoes that spread yellow fever exist in the United States, and areas of our country experienced outbreaks of the disease throughout the nineteenth century, importation could potentially result in sustained transmission in this country. Yellow fever is not currently included in the specific disease list in the regulation, but HHS/CDC would be classify it as a *communicable disease of public health significance* under the newly proposed definition, because it is a quarantinable disease by Presidential Executive Order and a disease that requires notification to WHO as an event that may constitute a public health emergency of international concern under the IHR (2005).

The examples below enumerate some of the most recent (and largely unpredictable) disease outbreaks encountered as refugees resettle into the United States:

—*March 2007 to the present*: Imported malaria outbreak in Burundian refugees from Tanzania. Over 40 cases of malaria have occurred as of October 2007 in more than 12 U.S. states, including 18 cases in children less than 10 years old, despite the administration of a pre-departure drug treatment regimen. Single cases or small domestic outbreaks through

mosquitoes are another potential risk from this outbreak.

—*October 2007 to the present*: at least 12 cases of cholera have been reported in several thousand U.S.-bound refugees from the Dadaab refugee camp in Kenya, which led to a temporary suspension of resettlement. This was the second outbreak of cholera in this camp in 2007; an earlier outbreak affected more than 200 refugees in June 2007.

—*July 2007 to the present*: cholera in Mae La refugee camp in Thailand, with over 200 cases reported as of October 2007.

—*April to June 2007*: 288 cases of cholera were reported in Dadaab refugee camp in Kenya. These cases included four deaths and necessitated a five-day holding period for U.S.-bound refugees before travel.

—*January to May 2007*: A measles outbreak affected over 100 persons in Dadaab refugee camp in Kenya and showed unusual epidemiology: 43 percent of cases were in persons 15 years of age and older (measles usually affects only children, and thus most vaccination campaigns only cover those under 5 years of age).

—*November 2006 to May 2007*: Rift Valley Fever in Kenya (including in the Dadaab camp), Somalia, and the United Republic of Tanzania, with over 300 deaths.

—*October 2006*: A case of polio reported in the Dadaab refugee camp in Kenya, in the first reported local transmission of wild poliovirus for over 20 years in Kenya; only quick action by HHS/CDC avoided the importation of wild poliovirus (WPV) into the United States. (The last indigenous case of WPV in the United States was in 1979, and the last imported case of WPV was in 1993.)

Vector-borne diseases involve a pathogen transmitted from an infected individual or animal, usually by an insect or other arthropod such as a mosquito or tick. There are several vector-borne diseases that are circulating in areas with U.S.-bound immigrants and refugees, all of which could spread into the U.S. population. These include exotic illnesses like chikungunya, dengue, and possibly Rift Valley fever.

Pandemic Influenza

The changes in the medical screening rules will also provide HHS/CDC officials with the authority to screen applicants that are coming into the United States from areas affected by a possible pandemic influenza. The *World Health Report 2007—A safer future: global public health security in the 21st*

century, issued by the WHO, emphasizes the danger of an influenza pandemic. A pandemic strain of influenza would be far more contagious than SARS, since it spreads by coughing and sneezing, and is transmitted with a short incubation period that reduces the time for tracing the spread of disease and isolating patients. An influenza pandemic could extend the enormous health consequences seen with SARS in Asia and Canada to every corner of the world within a matter of months.

Although HHS/CDC cannot predict the timing and exact strain, science and history suggest the world will suffer at least one influenza pandemic this century, which has the potential to have a rapid and immense impact on all segments of the U.S. population and our economy. In the 20th century, the greatest influenza pandemic occurred in 1918–1919, which caused an estimated 40–50 million deaths worldwide. A severe pandemic, as happened in 1918, could now have a much greater impact. When pandemic strains emerge, they sweep through nations with frightening velocity. The three pandemics of the 20th century each encircled the world within months of their emergence into humans. Based on the current speed and volume of international movement of people and animals, there is no reason to think the next pandemic would spread any slower.

Although health care has improved in the past decades, the WHO is predicting that today an influenza pandemic could result in 2–7.4 million deaths globally.¹ The WHO estimates that if a pandemic virus emerged now, the spread of the disease would be rapid. Based on experiences with past pandemics, some experts have predicted an illness that could affect around 25 percent of the world's population—more than 1.5 billion people. Should these forecasts prove accurate, the impact an influenza pandemic would have on national and international public health, and on economic and political security, would be enormous. Even if the virus caused relatively mild symptoms, the economic and social disruption that would arise from sudden surges of illness in so many people—occurring almost simultaneously throughout the world—would be incalculable.²

Interpandemic (seasonal) influenza results in more than 200,000 hospitalizations every year and causes

an average of 36,000 deaths annually in the United States. Modeling studies suggest that, in the absence of effective control measures, a medium-level pandemic (in which 15 to 35 percent of the population of the United States develops influenza) could result in 89,000 to 207,000 deaths, between 314,000 and 734,000 hospitalizations, 18 to 42 million outpatient visits, and 20 to 47 million sick people. The associated economic impact in the United States alone could range between \$71.3 and \$166.5 billion.

The H5N1 virus that is currently circulating in Asia, Africa and Europe provides an example of the immense potential impact of an emerging influenza virus. As of March 19, 2008, the H5N1 strain of influenza virus has killed over 63 percent of the 373 humans affected, and authorities fear the disease could mutate into a form that could pass quickly and efficiently from human to human, which could spark a global pandemic. The 14 countries that have reported laboratory-confirmed human cases of H5N1 infection as of March 19, 2008, are Azerbaijan, The People's Republic of China, Djibouti, Thailand, Egypt, Vietnam, Cambodia, Indonesia, Laos, Nigeria, Pakistan, Burma, Turkey, and Iraq. Before the next pandemic virus becomes well-adapted to humans, there is an urgent need for the United States to be prepared to detect human cases, and to prevent a novel influenza virus from being imported to the United States. One of the most effective ways to protect the American population is the preventive medical screening of aliens which would thereby help avert the entry and importation of a pandemic strain, or at least delay its arrival.

HHS/CDC is implementing these new provisions immediately because the United States needs to respond effectively to any potential emerging communicable disease. HHS/CDC is taking this immediate action because the existing definition of *communicable diseases of public health significance* and the scope of medical screening do not adequately reflect current threats or protect against the significant harm to the American public currently ongoing and future outbreaks represent. Changing our approach to identifying, screening and testing for communicable diseases of public health significance will greatly improve our ability to detect, treat, and mitigate the potential introduction into—and spread throughout our country—of newly emerging and re-emerging diseases.

Under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B) and (d)(3), HHS/CDC

finds that good cause exists to waive prior notice and comment and a 30 day delay in effective date on this rule is impracticable and contrary to the public interest. It is critical, for the reasons stated above, that HHS/CDC act quickly to ensure appropriate response, now and in the immediate future, to urgent disease threats that could have significant consequences in the United States. As noted, CDC is eager to consider public comment and will revise the rule as appropriate after receiving and analyzing any comments submitted.

VIII. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act of 1995

HHS/CDC has examined the impact of the Interim Final Rule under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act (UMRA) of 1995.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits.

HHS/CDC commissioned an analysis of the rule, which is included in the docket. The analysis examined the increased costs to immigrants, refugees and other entities, and the benefits of additional screening in preventing the spread of disease in the U.S. population.

Based on recent history of disease outbreaks worldwide, the analysis estimates an additional cost of \$4 million per year to immigrants and refugees. Immigrants will bear the additional medical testing costs for themselves, and the U.S. government will bear the additional medical testing costs for refugees. The benefit to the U.S. population associated with reduced incidence of secondary infections is estimated to be \$30 million.

These estimates only reflect the costs and benefits based on recent history. The study examined the benefits and costs associated with a new or re-emerging disease separately, but did not include them in the annualized values because of the inherent inability to estimate the frequency of an unknowable event.

Based on the analysis, HHS/CDC has determined that the rule is not economically significant, as defined under Executive Order 12866.

HHS/CDC considered the proposed regulation's effects on small entities, as required by the Regulatory Flexibility Act, and certifies that the final rule will

¹ Pandemic influenza preparedness and mitigation in refugee and displaced populations, WHO guidelines for humanitarian agencies, May 2006.

² The World Health Report 2007—A safer future: global public health security in the 21st century, WHO, August 2007.

not have a significant economic impact on small entities.

HHS/CDC evaluated the rule requirements for compliance with the UMRA of 1995. This rule does not contain Federal mandates under the regulatory provisions of Title II of the UMRA for State, local or tribal governments, nor for the private sector. Finally, the rule's provisions will not affect small governments.

B. Environmental Impact

HHS has determined that provisions that amend 42 CFR part 34 will not have a significant impact on the human environment.

C. Federalism

In accordance with Executive Order 13132, HHS/CDC determines that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Civil Justice Reform

HHS/CDC has reviewed this rule under Executive Order 12988, on Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court to challenge this rule.

IX. Paperwork Reduction Act of 1995

The Paperwork Reduction Act applies to the data collection requirements found in 42 CFR part 34. The U.S. Department of State (DoS) is responsible for providing forms to panel physicians to document the medical examination and screening information for aliens. The Office of Management and Budget (OMB) last approved this data collection under OMB Control No. 1405-0113, on September 30, 2007. DoS will update its information collection request to reflect the changes made to the forms by this Interim Final Rule.

X. References

The following references are available at the following Internet address: <http://www.who.int>.

1. Pandemic influenza preparedness and mitigation in refugee and displaced populations, WHO guidelines for humanitarian agencies, May 2006.

2. The World Health Report 2007—A safer future: global public health security in the 21st century, WHO, August 2007.

List of Subjects in 42 CFR Part 34

Aliens, Health Care, Scope of Examination, Passports and Visas, Public Health.

■ For the reasons stated in the preamble, the Centers for Disease Control and Prevention (CDC), within the U.S. Department of Health and Human Services (HHS), is amending 42 CFR part 34 as follows:

PART 34—[AMENDED]

■ 1. The authority citation for part 34 is amended to read as follows:

Authority: 42 U.S.C. 252; 8 U.S.C. 1182 and 1222.

■ 2. Amend § 34.2 by revising paragraph (b) to read as follows:

§ 34.2 Definitions.

* * * * *

(b) *Communicable disease of public health significance.* Any of the following diseases:

- (1) Chancroid.
- (2) Communicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. The current revised list of quarantinable communicable diseases is available at <http://www.cdc.gov> and <http://www.archives.gov/federal-register>.
- (3) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the factors listed in § 34.3(d) and for which the CDC Director has determined (A) a threat exists for importation into the United States, and (B) such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the revised International Health Regulations (<http://www.who.int/csr/ihr/en/>), as adopted by the Fifty-Eighth World Health Assembly in 2005, and as entered into effect in the United States in July, 2007, subject to the U.S. Government's reservation and understandings:

- (i) Any of the communicable diseases for which a single case requires notification to the World Health Organization (WHO) as an event that may constitute a public health emergency of international concern, or
- (ii) Any other communicable disease the occurrence of which requires notification to the WHO as an event that may constitute a public health emergency of international concern.

HHS/CDC's determinations will be announced by notice in the **Federal Register**.

- (4) Gonorrhea.
- (5) Granuloma inguinale.
- (6) Human immunodeficiency virus (HIV) infection.
- (7) Leprosy, infectious.
- (8) Lymphogranuloma venereum.

(9) Syphilis, infectious stage.

(10) Tuberculosis, active.

* * * * *

■ 3. Section 34.3 is revised to read as follows:

§ 34.3 Scope of examinations.

(a) *General.* In performing examinations, medical examiners shall consider those matters that relate to the following:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(3) Drug abuse or addiction; and

(4) Any other physical abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(b) *Scope of all medical examinations.*

(1) All medical examinations will include the following:

(i) A general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis and HIV.

(ii) A physical examination and medical history for diseases specified in §§ 34.2(b)(1), and 34.2(b)(4) through 34.2(b)(10).

(2) The scope of the examination shall include any laboratory or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history, for the examining physician to reach a conclusion about the presence or absence of a physical or mental abnormality, disease, or disability.

(c) *Additional medical screening and testing for examinations performed outside the United States.* (1) HHS/CDC may require additional medical screening and testing for medical examinations performed outside the United States for diseases specified in §§ 34.2(b)(2) and 34.2(b)(3) by applying the risk-based medical and epidemiologic factors in paragraph (d)(2) of this section.

(2) Such examinations shall be conducted in a defined population in a geographic region or area outside the United States as determined by HHS/CDC.

(3) Additional medical screening and testing shall include a medical interview, physical examination, laboratory testing, radiologic exam, or other diagnostic procedure, as determined by HHS/CDC.

(4) Additional medical screening and testing will continue until HHS/CDC determines such screening and testing is no longer warranted based on factors such as the following: Results of disease outbreak investigations and response efforts; effectiveness of containment and control measures; and the status of an applicable determination of public health emergency of international concern declared by the Director General of the WHO.

(5) HHS/CDC will directly provide medical examiners information pertaining to all applicable additional requirements for medical screening and testing, and will post these at the following Internet addresses: <http://www.cdc.gov/ncidod/dq/technica.htm> and <http://www.globalhealth.gov>.

(d) *Risk-based approach.* (1) HHS/CDC will use the medical and epidemiological factors listed in paragraph (d)(2) of this section to determine the following:

(i) Whether a disease as specified in § 34.2(b)(3)(ii) is a communicable disease of public health significance.

(ii) Which diseases in §§ 34.2(b)(2) and (b)(3) merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening.

(2) Medical and epidemiological factors include the following:

(i) The seriousness of the disease's public health impact;

(ii) Whether the emergence of the disease was unusual or unexpected;

(iii) The risk of the spread of the disease in the United States;

(iv) The transmissibility and virulence of the disease;

(v) The impact of the disease at the geographic location of medical screening; and

(vi) Other specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States.

(e) *Persons subject to requirement for chest X-ray examination and serologic testing.* (1) As provided in paragraph (e)(2) of this section, a chest X-ray examination, and serologic testing for syphilis and serologic testing for HIV shall be required as part of the examination of the following:

(i) Applicants for immigrant visas;

(ii) Students, exchange visitors, and other applicants for non-immigrant visas required by a U.S. consular

authority to have a medical examination;

(iii) Applicants outside the United States who apply for refugee status;

(iv) Applicants in the United States who apply for adjustment of their status under the immigration statute and regulations.

(2) *Chest X-ray examination and serologic testing.* Except as provided in paragraph (e)(2)(iv) of this section, applicants described in paragraph (e)(1) of this section shall be required to have the following:

(i) For applicants 15 years of age and older, a chest x-ray examination;

(ii) For applicants under 15 years of age, a chest x-ray examination if the applicant has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period;

(iii) For applicants 15 years of age and older, serologic testing for syphilis and HIV.

(iv) *Exceptions.* Serologic testing for syphilis and HIV shall not be required if the alien is under the age of 15, unless there is a reason to suspect infection with syphilis or HIV. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, or chest X-ray examination for good cause, upon application approved by the Director.

(3) *Immune Response to Mycobacterium tuberculosis antigens.* (i) All aliens 2 years of age or older in the United States who apply for adjustment of status to permanent residents, under the immigration laws and regulations, or other aliens in the United States who are required by the U.S. Department of Homeland Security to have a medical examination in connection with a determination of their admissibility, shall be required to have a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens. Exceptions to this requirement may be authorized for good cause upon application approved by the Director. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(ii) Aliens less than 2 years old shall be required to have a tuberculin skin test, or an equivalent, appropriate test to

show an immune response to *Mycobacterium tuberculosis* antigens, if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(iii) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and, if indicated, a chest radiograph.

(iv) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and a chest radiograph, regardless of age, if they have symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period.

(4) *Additional testing requirements.* All applicants subject to the chest radiograph requirement, and for whom the radiograph shows an abnormality suggestive of tuberculosis disease, shall be required to undergo additional testing for tuberculosis.

(5) *How and where performed.* All chest radiograph images used in medical examinations performed under the regulations in this Part shall be large enough to encompass the entire chest (approximately 14 by 17 inches; 35.6x43.2 cm.). Serologic testing for HIV shall be a sensitive and specific test, confirmed when positive by a test such as the Western blot test or an equally reliable test. For aliens examined abroad, the serologic testing for HIV must be completed abroad, except that the Secretary of Homeland Security after consultation with the Secretary of State and the Secretary of Health and Human Services may in emergency circumstances permit serologic testing of refugees for HIV to be completed in the United States.

(6) *Chest X-ray, laboratory, and treatment reports.* The chest radiograph reading and serologic test results for syphilis and HIV shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest X-ray image, the medical notification

shall include at least a summary statement of findings of the earlier images, followed by a complete reading of the last image, and dates and details of any laboratory tests and treatment for tuberculosis.

(f) *Procedure for transmitting records.* For aliens issued immigrant visas, the medical notification and chest X-ray images, if any, shall be placed in a separate envelope which shall be sealed. When more than one chest X-ray image is used as a basis for the examiner's conclusions, all images shall be included.

(g) *Failure to present records.* When a determination of admissibility is to be made at the U.S. port of entry, a medical hold document shall be issued pending completion of any necessary examination procedures. A medical hold document may be issued for aliens who:

- (1) Are not in possession of a valid medical notification, if required;
- (2) Have a medical notification which is incomplete;
- (3) Have a medical notification which is not written in English;
- (4) Are suspected to have an excludable medical condition.

(h) The Secretary of Homeland Security, after consultation with the Secretary of State and the Secretary of Health and Human Services, may in emergency circumstances permit the medical examination of refugees to be completed in the United States.

(i) All medical examinations shall be carried out in accordance with such technical instructions for physicians conducting the medical examination of aliens as may be issued by the Director. Copies of such technical instructions are available upon request to the Director, Division of Global Migration and Quarantine, Mailstop E03, HHS/CDC, Atlanta GA 30333.

Dated: June 25, 2008.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. E8-23485 Filed 10-3-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XK40

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reopening of the 2008 Deepwater Grouper and Tilefish Commercial Fisheries

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the commercial fishery for deepwater grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) and tilefishes in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS previously determined that the quotas for these commercial fisheries would be reached by May 10, 2008. The latest estimates for deepwater grouper and tilefish landings indicate the quotas were not reached by that date. Consequently, NMFS will reopen these fisheries for 10 days. The purpose of this action is to allow the fisheries to maximize harvest benefits and at the same time protect the deepwater grouper and tilefish resources.

DATES: The reopening is effective 12:01 a.m., local time, November 1, 2008, until 12:01 a.m., local time, on November 11, 2008. The fisheries will then be closed until 12:01 a.m., local time, January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727-824-5305, fax 727-824-5308, e-mail Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for deepwater grouper in the Gulf of Mexico at 1.02 million lb (463,636 kg) and for tilefish in the Gulf of Mexico at 440,000 lb

(200,000 kg) for the current fishing year, January 1 through December 31, 2008.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS projected the fisheries for deepwater grouper and tilefishes would reach their respective quotas on May 10, 2008, and closed the fisheries on that date (73 FR 24883, May 6, 2008). Based on current statistics, NMFS has determined that only 89 percent of the available commercial quotas for deepwater grouper and tilefishes were landed. Based on 2008 daily landings rates and the pounds remaining on each quota (approximately 100,000 lb (45,359 kg) for deepwater grouper and 46,000 lb (20,865 kg) for tilefishes), NMFS has determined these fisheries can reopen for 10 days. Accordingly, NMFS is reopening the commercial deepwater grouper and tilefish fisheries in the Gulf of Mexico EEZ from 12:01 a.m., local time, on November 1, 2008, until 12:01 a.m., local time, on November 11, 2008. The fisheries will then be closed until 12:01 a.m., local time, on January 1, 2009. November 1 was chosen as the opening day based on feedback from the fishing industry and weather concerns. Many fishers indicated that this was the most productive time for the reopening. NMFS also chose to wait until after the peak of hurricane season to promote safety at sea, consistent with National Standard 10 of the Magnuson-Stevens Act.

The operator of a vessel with a valid commercial vessel permit for Gulf reef fish may not fish for or possess deepwater grouper or tilefishes prior to 12:01 a.m., local time, November 1, 2008, and must have landed and bartered, traded, or sold such deepwater grouper or tilefishes prior to 12:01 a.m., local time, November 11, 2008.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of deepwater grouper and tilefishes in or from the Gulf of Mexico EEZ, and the sale or purchase of deepwater grouper and tilefishes taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of deepwater grouper or tilefishes that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 11, 2008, and were held in cold storage by a dealer or processor. Vessels with commercial quantities of Gulf reef fish on board are prohibited from retaining a recreational bag limit of Gulf reef fish.

Thus, such a vessel may only have a commercial quantity of reef fish other than deepwater grouper or tilefishes or a recreational bag limit of Gulf reef fish.

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 prior notice and opportunity for public comment is unnecessary. Prior notice and opportunity for public comment on the reopening is unnecessary because the rule establishing the annual quota has already been subject to notice and comment, and all that remains is the annual administrative act of notifying the public of where harvest stands in relation to the quota, and in this case that additional time is needed to harvest the established quota. The rule contains a routine determination relative to harvest levels for the fishing year that are relatively insignificant in nature and impact to the industry and to the public as a whole.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 29, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8-23582 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 697

[Docket No. 080221249-81231-02]

RIN 0648-AT13

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coast Red Drum Fishery off the Atlantic States; Transfer of Management Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to repeal the Atlantic Coast Red Drum Fishery Management Plan (FMP) and to transfer the management authority of Atlantic red drum in the exclusive economic zone (EEZ) from the South Atlantic Fishery Management Council (South Atlantic Council), in cooperation with the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), under the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act) to the Atlantic States Marine Fisheries Commission (Commission) under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), as requested by the Councils and the Commission. The intent of this final rule is to enhance the effectiveness and efficiency of managing Atlantic red drum.

DATES: This final rule is effective November 5, 2008.

ADDRESSES: Copies of the environmental assessment (EA), which describes the impacts of the transfer of management authority, may be obtained from Kate Michie, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305.

SUPPLEMENTARY INFORMATION: The Atlantic red drum fishery off the South Atlantic and Mid-Atlantic coastal states is currently managed under two separate FMPs. Atlantic red drum located in the EEZ are managed under the Atlantic Coast Red Drum FMP prepared by the South Atlantic Council, in cooperation with the Mid-Atlantic Council (Council FMP), and implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. The Council FMP prohibits harvest or possession of red drum in the South Atlantic and Mid-Atlantic EEZ. Atlantic red drum located in state waters are managed under the Interstate Fishery Management Plan (ISFMP) for Red Drum by the Atlantic coast states (New Jersey through Florida) and the Commission. This final rule repeals the Council FMP and implementing regulations issued under the Magnuson-Stevens Act and simultaneously replaces them with substantially identical regulations under the Atlantic Coastal Act. The Atlantic Coastal Act allows the Federal government to better coordinate its management practices with the states

via the Commission process. The repeal of the Council FMP would occur at the same time as this rule is implemented.

On April 3, 2008, NMFS published a proposed rule for the transfer of management authority of Atlantic red drum and requested public comment (73 FR 18253). The rationale for this action, including the statute giving authority to the Commission to manage Atlantic red drum in the EEZ, the purpose and need for transfer of management authority, and the benefits of this transfer are included in the preamble to the proposed rule and are not repeated here.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' responses. Three comments were received on this action. One comment was in favor of the transfer of management authority, one comment was opposed to the transfer of authority, and one comment was in favor of the transfer of authority but did not agree that regulations under the Atlantic Coastal Act are comparable to the current Magnuson-Stevens Act regulations.

Comment 1: The first commenter stated the transfer of authority will result in more efficient and effective management for Atlantic red drum.

Response: The purpose of this action is to manage Atlantic red drum under one FMP rather than two, thus minimizing management costs and eliminating unnecessary duplication of management efforts. This transfer of management authority furthers Magnuson-Stevens Act national standard 7, which states "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."

Comment 2: The second commenter stated the changes being proposed are anti-environmental in nature, and NMFS in particular is biased toward "fish profiteers."

Response: This rule will not change existing restrictions prohibiting the harvest or possession of red drum in the EEZ. NMFS and the U.S. Coast Guard will continue to enforce those prohibitions. Repealing the Council FMP under the Magnuson-Stevens Act and simultaneously implementing comparable regulations under the Commission FMP under the Atlantic Coastal Act, will provide for a more efficient and timely rebuilding of the Atlantic red drum resource.

Comment 3: One commenter stated the regulations under the Atlantic Coastal Act intended to replace those under the Magnuson-Stevens Act are

not comparable, and the EA does not acknowledge some of the essential fish habitat (EFH) designated for red drum will be eliminated, nor does it mention the loss of habitat areas of particular concern (HAPC).

Response: NMFS does not believe that adoption of this rule will result in an appreciable loss of habitat protection for red drum.

As a preliminary matter, red drum EFH, including habitat areas of particular concern, substantially overlaps the EFH of other species. Accordingly, even if red drum EFH designations are necessarily withdrawn in the transfer, NMFS would still likely recommend the same protective measures through its EFH consultations on other species. In other words, although red drum habitat protections would be incidental to EFH consultations on other species, red drum habitat would nevertheless still be protected. For example, the South Atlantic Coastal Migratory Pelagics FMP (CMP FMP) includes EFH areas that overlap areas previously designated as EFH for red drum, namely, barrier island ocean-side waters from the surf to the shelf break zone, all coastal inlets, and all state-designated nursery habitats of particular importance to coastal migratory pelagics. Under the CMP FMP the surf zone is not referred to as a "high-salinity" surf zone as it is in the red drum EFH description; however, the same meaning for each is inferred. Additionally, the South Atlantic Shrimp FMP (Shrimp FMP) does use the term "tidal freshwater" in its designation of EFH for penaeid shrimp. The Shrimp FMP includes inshore nursery areas in its designation of EFH for penaeid shrimp and defines this habitat as tidal freshwater, estuarine, and marine emergent wetlands (e.g., intertidal marshes); tidal palustrine forested areas; mangroves, tidal freshwater, estuarine, and submerged aquatic vegetation (SAV) (e.g., seagrass); and subtidal and intertidal non-vegetated flats. This designation of EFH for penaeid shrimp applies from North Carolina through the Florida Keys.

Further, to the extent that protection is lost under the Magnuson-Stevens Act in the transfer, NMFS believes that such loss is mitigated by comparable protections that would remain under other statutes. Specifically, the Fish and Wildlife Coordination Act, similar to the Magnuson-Stevens Act, requires Federal agencies to first consult with NMFS before taking an action that might impact NMFS trust resources. The Fish and Wildlife Coordination Act requires that the Federal agency "...shall consult with...the head of the agency exercising

administration over the wildlife resources...with a view to the conservation of wildlife resources by preventing loss of and damage to such resources..." Further, the Fish and Wildlife Coordination Act allows the Secretary to make recommendations to the Federal agency on alternative "...means and measures that should be adopted to prevent the loss of or damage to such wildlife resources..." (16 U.S.C. 661-667e). Accordingly, although EFH is a technical term unique to the Magnuson-Stevens Act and EFH consultation is a process reserved to species managed under the Magnuson-Stevens Act, it does not necessarily follow that comparable habitat protection would be altogether lost if red drum were managed under an alternative statute. Federal agencies would still be required to consult with NMFS on the potential impacts of their actions to red drum habitat, but simply under a different statute.

Comment 4: One of the above commenters also stated that the EA does not discuss Executive Order (E.O.) 13449, (72 FR 60531, October 24, 2007), regarding the protection of striped bass and red drum, and the rule would not establish consistent EFH consultation requirements between red drum stocks of the Gulf of Mexico and Atlantic.

Response: The commenter is concerned this rule will establish inconsistent regulations between the red drum stocks of the Gulf of Mexico and the Atlantic. Gulf of Mexico red drum stocks are already managed independently of the Atlantic red drum stocks. The ability of the NMFS to consult and provide consistent recommendations for the conservation and preservation of habitats utilized by red drum under the Fish and Wildlife Coordination Act will not change. Additionally, because NMFS will continue to consult and provide conservation recommendations for EFH of all other Council-managed species, the ability to consistently protect and conserve fishery habitats, including all habitats utilized by red drum, will not be significantly changed.

NMFS understands this rule to be consistent with the spirit and intent of E.O. 13449, because comparable EFH protections for Atlantic red drum will be maintained under previously noted FMPs for Council-managed species, and comparable fishery management regulations under the Atlantic Coastal Act will take the place of current regulations under the Magnuson-Stevens Act, and because comparable habitat consultation will occur under the Fish and Wildlife Coordination Act. Furthermore, the Atlantic Coastal Act

clearly includes habitat conservation among its intended goals with regards to state-federal cooperation by stating: "The Secretary in cooperation with the Secretary of the Interior shall develop and implement a program to support the interstate fishery management efforts of the Commission. The program shall include activities to support and enhance State cooperation in collection, management, and analysis of fishery data; law enforcement, habitat conservation; fishery research, including biological and socioeconomic research; and fishery management planning" (16 U.S.C. 5103).

Classification

The Administrator, Southeast Region, NMFS, determined that the transfer of management authority is necessary for the conservation and management of the Atlantic red drum fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 697

Fisheries, Fishing.

Dated: September 30, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 622 and 697, are amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

■ 2. In § 622.1, Table 1, the entries for “Atlantic Coast Red Drum FMP” are removed.

§ 622.32 [Amended]

■ 3. In § 622.32, remove paragraph (b)(3), and redesignate paragraph (b)(4) as paragraph (b)(3); remove newly redesignated paragraph (b)(3)(iii), and redesignate newly redesignated paragraphs (b)(3)(iv) through (vi) as paragraphs (b)(3)(iii) through (v).

§ 622.48 [Amended]

■ 4. In § 622.48, remove paragraph (k), and redesignate paragraphs (l) and (m) as paragraphs (k) and (l), respectively.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 5. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 6. In § 697.2, the definition of “Atlantic red drum” is added and the definition of “Regional Administrator” is revised, in alphabetical order, to read as follows:

§ 697.2 Definitions.

* * * * *

Atlantic red drum, also called redfish, means *Sciaenops ocellatus*, or a part thereof, found in the waters of the Atlantic Ocean off the Atlantic coastal states, to the outer boundary of the EEZ, as specified in § 600.10 of this chapter, from the boundary of the United States and Canada, to the boundary between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, as specified in § 600.105(c) of this chapter.

* * * * *

Regional Administrator, means Regional Administrator, Northeast Region, NMFS, or Regional Administrator, Southeast Region, NMFS, whichever has the applicable jurisdiction, or a respective designee.

* * * * *

■ 7. In § 697.7, paragraph (f) is added to read as follows:

§ 697.7 Prohibitions.

* * * * *

(f) *Atlantic red drum fishery*. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Harvest or possess Atlantic red drum in the EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6' N. lat., 73°54.1' W. long., such

point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters, and north of the demarcation line between the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council described in § 600.105(c) of this chapter.

(2) Fail to release immediately without further harm, all Atlantic red drum caught in the EEZ area described in paragraph (f)(1) of this section.

■ 8. In § 697.22, the introductory text and paragraph (a)(1) are revised to read as follows:

§ 697.22 Exempted fishing.

The Regional Administrator or Director may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) * * *

(1) Have a detrimental effect on the American lobster, weakfish, Atlantic red drum, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery; or

* * * * *

[FR Doc. E8-23586 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 071106671-8010-02]

RIN 0648-XK86

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by 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 vessels 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 total

allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 3, 2008, until 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 25,583 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 24,583 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels 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 closure of Pacific cod by vessels catching Pacific cod for processing by the inshore component of 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 29, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2008.

Emily H. Menashes

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

[FR Doc. E8-23550 Filed 10-1-08; 4:15 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 194

Monday, October 6, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC-2008-0071]

RIN 3150-A126

Medical Use of Byproduct Material—Amendments/Medical Event Definitions; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On August 6, 2008 (73 FR 45635), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would amend its regulations in 10 CFR Part 35, “Medical Use of Byproduct Material” to change medical event definitions. The public comment period for this proposed rule was to have expired on October 20, 2008.

By letter dated September 16, 2008, the NRC’s Advisory Committee on the Medical Use of Isotopes (ACMUI) requested an extension to November 7, 2008. As explained in the letter, the fall meeting of the ACMUI is scheduled for October 27 and 28, 2008, and the subject matter in the proposed rule is on the agenda for discussion at this public meeting. ACMUI believes that it will be able to provide better comment on the proposed rule following this discussion. Due to the complex nature of the proposed medical rule and the high public interest of the medical community, the NRC has decided to extend the comment period until November 7, 2008.

DATES: The comment period has been extended and now expires on November 7, 2008. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include the following number RIN 3150-A126 in the subject

line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC’s Web site in the Agencywide Documents Access and Management System (ADAMS) and at <http://www.regulations.gov>. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. You may submit comments by any one of the following methods.

Electronically: Via the Federal eRulemaking Portal (Docket ID NRC-2008-0071) and follow instructions for submitting comments. Address questions about this docket to Carol Gallagher 301-415-5905; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC’s Public Document Room (PDR), Room O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-0253, e-mail, Edward.Lohr@nrc.gov.

Dated at Rockville, Maryland, this 30th day of September 2008.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8-23534 Filed 10-3-08; 8:45 am]

BILLING CODE 7590-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Labeling Requirement for Toy and Game Advertisements

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 105 of the Consumer Product Safety Improvement Act of 2008, (“CPSIA”), directs the Commission to promulgate regulations to effectuate this section with respect to advertising for certain toys and games in catalogues and other printed materials not later than 90 days after enactment. The Commission invites public comment on this proposal.

DATES: Written comments concerning the advertisement requirements with respect to catalogues and other printed materials must be received by October 20, 2008. Written comments concerning the requirements with respect to Internet advertisements must be received by November 20, 2008.

ADDRESSES: Comments should be e-mailed to cpsc-os@cpsc.gov, and should be captioned “ADVERTISING REQUIREMENTS NPR.” Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by facsimile to (301) 504-0127.

FOR FURTHER INFORMATION CONTACT:

Barbara E. Parisi, Project Manager, Office of General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504-7879 or e-mail: bparisi@cpsc.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 24(a) of the Federal Hazardous Substances Act (FHSA) prescribes cautionary labeling requirements for toys or games that are intended for use by children from 3 to 6 years old and contain small parts. The cautionary statement warns potential purchasers that these products are not for children under 3 years old due to choking hazards. Section 24(b) of the FHSA prescribes similar requirements for balloons, small balls, and marbles intended for children 3 years and older, or any toy or game which contains such a balloon, small ball, or marble.

Section 105 of the CPSIA, Public Law 110-314, 122 Stat. 3016 (August 14, 2008), amends section 24 of the FHSA to require that, when a product's packaging requires a cautionary statement, advertising for the product that provides a direct means for purchase or order of the product (including catalogues, other printed materials, and Internet Web sites) must bear the same cautionary statement. Section 105 provides some guidelines on the format of the cautionary statement. Specifically, it must be prominently displayed in the primary language used in the advertisement, in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in the advertisement, and in a manner consistent with 16 CFR part 1500.

Section 105 of the CPSIA also allows the Commission to provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date. In addition, the Commission is directed to determine the applicability of the requirements to catalogues and other printed material distributed solely between businesses and not to individual consumers.

Section 105(2) of the CPSIA exempts the Commission from conducting a Regulatory Flexibility Act and Paperwork Reduction Act analysis for this rulemaking.

B. Proposed Regulation

Following is a brief description of the principal provisions of the Commission's proposed regulation.

The CPSIA directs that the cautionary statements required by section 105 of

the CPSIA be prominently displayed in a manner consistent with 16 CFR part 1500. The CPSIA also provides the Commission with the authority to promulgate a regulation concerning the size and placement of the required cautionary statements. The Commission believes that the requirements in 16 CFR 1500.121 are consistent with commonly accepted hazard-labeling guidelines and are appropriate as guidelines for the cautionary statements in the advertising, with a few modifications, as described below.

1. Minimum Type Size for Advertisements in Catalogues and Other Printed Material.

The minimum type-size requirements specified in 16 CFR 1500.121 are based on the area of the principal display panel of a hazardous substance. For purposes of labeling advertisements in catalogues or other printed materials, these type-size requirements would be determined based on the size of the advertisement for the specific toy or game to which it applies. For small advertisements—ones no more than 2 square inches—16 CFR 1500.121 would permit signal words and hazard statements with letter heights as small as $\frac{3}{64}$ inch, or less than 5 points; the letter heights of other cautionary material in the label could be as small as $\frac{1}{32}$ inch, or about 3 points.

The Commission has preliminarily determined, based on research, that such small or fine-print risk disclosures in product advertising would be ineffective because people are unlikely to read them. Based on research regarding the legibility and readability of text and numerals, the Commission has preliminarily determined that the proposed rule should refer to the minimum type sizes specified in 16 CFR 1500.121, but include the requirement that the sizes employed cannot be smaller than 0.08 inches, or about 5/64 inch.

ANSI 2535.6 (2006), the primary U.S. voluntary consensus standard on product safety information in product manuals, instructions, and other collateral materials, specifies that safety message text be no smaller than the majority of other non-safety text, other than headings, immediately surrounding it. The Commission agrees with this specification and has applied this general principle to the cautionary labeling of advertisements in catalogues or other printed materials by requiring cautionary statements to be the larger of (1) a certain minimum type size based on the size of the advertisement (but no smaller than 0.08 inches), or (2) the size of the largest text in the advertisement that describes the function, use, or

characteristics of the toy or game being advertised.

2. Abbreviated Warnings for Catalogues and Other Printed Materials.

The Commission recognizes that it may be difficult to include the full cautionary statements as spelled out in sections 24(a) and (b) of the FHSA next to each product in a catalogue or other printed material requiring a cautionary statement. ANSI Z535.6 (2006) allows for the use of section safety messages in product manuals, instructions, and other collateral materials. Although advertising and promotional materials are not included within the scope of ANSI Z535.6, this voluntary standard appears to be the most relevant to these materials. Section safety messages are those that apply to entire sections, subsections, or multiple paragraphs or procedures within a document, and typically appear at the beginning of the section to which they apply. One of the intended functions of section safety messages is to avoid the unnecessary repetition of safety information while allowing users to access the other information more easily and efficiently. If this concept were applied directly to advertisements in catalogues or other printed materials, a single version of a cautionary statement could be placed at the beginning of a page or section of advertised products that includes only toys and games that would require the same cautionary statements. This might be difficult to implement, however, in those cases in which a toy or game requires multiple cautionary statements. Additionally, research has shown that warnings generally should be located where consumers are likely to be looking when the information is needed, and a single relevant cautionary message at the beginning of a multi-page section could be missed easily. To address these concerns, the Commission proposes that shorthand, or abbreviated, versions of the required warnings be permitted in each product advertisement, provided that these are defined with the full warning at the bottom or top of each page—or extending across two facing pages if both pages contain products to which the warnings apply—of the catalogues. The bottom or top of each page or two-page spread must provide the definition, or full cautionary statement, for each abbreviated warning on that page. The proposed text of the rule contains the abbreviated statements appropriate for each cautionary statement.

3. Internet Warnings.

Section 105 of the CPSIA stipulates that the Commission shall promulgate a final rule “with respect to catalogues and other printed material” by

November 12, 2008. The CPSIA does not mandate that the Commission promulgate a final rule with regard to requirements for Internet advertising. Nonetheless, the Commission has proposed requirements for Internet advertising, as detailed below and included in the proposed rule.

The comment period with respect to requirements for Internet advertising is longer than that for requirements for catalogues and other printed materials. Comments on Internet advertising requirements must be received by November 20, 2008. Regardless of whether and when the Commission issues a final rule on the Internet advertising requirements, the requirements for Internet advertisements as implemented by Section 105 of the CPSIA will go into effect on December 12, 2008. As with catalogues and other printed materials, most of the requirements specified in 16 CFR 1500.121 may be applied to the cautionary labeling of advertisements on Internet Web sites. The minimum type-size requirements specified in 16 CFR 1500.121, however, cannot be applied readily since they are based on the area of the principal display panel, and the analogous area for an Internet advertisement could be limited by the size of the consumer's Internet browser application window or by the computer monitor or display area which could vary considerably. The Commission proposes that the type size of the cautionary statements must be at least equal to the size of the largest text in the advertisement that describes the function, use, or characteristics of the toy or game advertised (for example, the product description).

Research has found that risk information that is placed below the page scroll of a Web site is unlikely to be seen. To reduce the likelihood of this occurring, the Commission is proposing that the required cautionary statement be located immediately before any other statements in the advertisement that describes the function, use, or characteristics of the toy or game being advertised. Further, the Commission preliminarily finds that the use of abbreviated warnings in place of full text warnings is neither necessary nor desirable for Internet advertisements.

4. Business to Business Catalogues. The CPSIA directs the Commission to determine the applicability of the advertising requirements to catalogues and other printed materials that are distributed solely among businesses. The Commission has analyzed the benefits and costs associated with having the advertising requirements

applicable to business to business catalogues.

Some retailers that specialize in products for young children might be wary of carrying products that contain small parts or balloons. These retailers might value being provided cautionary statements before they order the product from their suppliers. However, Section 105 of the CPSIA already requires manufacturers, importers and other suppliers to inform retailers of any cautionary statements that are required to be included in catalogues and other printed advertisements for the products they supply. Specifying just how this information must be supplied (e.g., through a catalogue), would reduce the flexibility of manufacturers and other suppliers in determining how best to supply the required information. If the requirements were not applied to catalogues distributed solely between businesses, the manufacturers and other suppliers would have the flexibility to develop less costly means of providing the information to their retailers. Moreover, because retailers typically do not provide young children with direct access to the products, it is likely that applying these requirements to catalogues distributed solely among businesses would prevent very few injuries, if any. This would reduce the value of applying the requirements to catalogues distributed solely to retailers and similar businesses relative to the value of including them in catalogues distributed to consumers. There would be some costs associated with applying the advertising requirements to business to business catalogues, including costs associated with changing the page layouts to include cautionary statements. It will require some time and effort by the publishers to determine how the cautionary statements can best be added to their catalogues and then to proof the copy once the changes are made.

If an exemption were included for business to business catalogues and cautionary statements were not included in catalogues that were distributed to organizations or establishments such as schools, day care centers, churches, and recreational facilities as a result of the exemption, the intent of section 105 of the CPSIA could be thwarted. This is because such organizations often act as "ultimate consumers," purchasing the toys and games for the use of children and not for resale. Thus, any exemption provided would need to distinguish between catalogues distributed solely between businesses and those intended for final distribution to ultimate consumers, which may include institutions such as

schools, day care centers, churches, and recreational facilities.

The Commission seeks further input on whether advertising requirements for catalogues and other printed materials should also apply to materials distributed solely between businesses and not to ultimate consumers, and if not, how the Commission can distinguish catalogues distributed solely between businesses from those intended for final distribution to ultimate consumers, which may include institutions such as schools and day care centers.

C. Effective Date

Section 105 of the CPSIA provides that the requirements for Internet advertising shall take effect December 12, 2008. It provides that the requirements will apply to catalogues and other printed materials published or distributed on or after February 10, 2009. This includes catalogues that were printed prior to February 10, 2009 but not distributed until after February 10, 2009. The CPSIA authorizes the Commission to provide a grace period of not more than 180 days for catalogues and other printed material printed prior to February 10, 2009, during which time distribution of such catalogues and other printed materials shall not be considered a violation of the standard.

The Commission staff has determined that there can be relatively long lead times for developing and printing catalogues, and some publishers expect to distribute catalogues for as long as two years after printing. Thus, it is likely that there are catalogues in circulation now, or that have been printed, or will be printed over the next several weeks, that do not contain the cautionary statements, but that are intended for distribution after February 10, 2009. If the Commission did not provide for a grace period, the retailers, manufacturers, and importers who published the catalogues would have to stop distributing them on February 10, 2009. The catalogues still in stock would have to be discarded and replacement catalogues would have to be printed, a cost to the publishers both in terms of discarding of the catalogues and in the possible loss in sales if the business experienced delays in obtaining reprinted catalogues.

The cost of providing a grace period—that some consumers may purchase games or toys from catalogues that they would not have purchased had they seen the cautionary labeling—though difficult to quantify, is likely to be small. The same cautionary statements are required on the products' packaging, and a parent could return or keep the

product out of reach until the children are older if need be.

Even with a grace period of 180 days, all catalogues distributed after August 9, 2009, which includes all catalogues distributed in anticipation of the 2009 holiday shopping season, will have to contain the required cautionary statements.

Because of the significant lead time involved in printing catalogues and the relatively small cost of providing a grace period of 180 days, the Commission preliminarily finds that a grace period of 180 days is warranted.

D. Environmental Considerations

As a labeling rule, the proposed rule falls within the provisions of 16 CFR 1021.5(c) which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. It is true that, if no grace period were provided, the requirements in Section 105 of the CPSIA would apply to all catalogues or other printed materials distributed after February 10, 2009, so that materials printed prior to this date that did not have the cautionary statements could not be distributed and would have to be discarded. This would increase the volume of material entering the waste stream. However, the increase would be small relative to the total volume of materials that enter the waste stream each year. Providing a grace period would further reduce this impact. Based on this, the Commission preliminarily finds that neither an environmental assessment nor an environmental impact statement is required.

E. Request for Information and Comments

Interested persons are invited to submit comments regarding this proposal. The Commission specifically seeks comments on the following:

1. The abbreviated versions and the minimum type-size and placement requirements of the cautionary statements as proposed in this rule;
2. The impact of the proposals on minimum type-size and placement in catalogues and other printed materials on businesses;
3. How often catalogues or other written materials are published and how much lead time is required to prepare these materials for publication;
4. The cost of publishing new catalogues to meet these requirements without the 180 day grace period;
5. Whether the advertising requirements for catalogues and other printed materials should also apply to

materials distributed solely between businesses and not to ultimate consumers, and, if not, how the Commission can distinguish catalogues distributed solely between businesses from those intended for final distribution to ultimate consumers, which may include institutions such as schools, churches, day care centers, and recreational facilities.

Comments should be e-mailed to cpssc-os@cpssc.gov and should be captioned "ADVERTISING REQUIREMENTS NPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814, or delivered to the same address (telephone (301) 504-0800). Comments also may be filed by telefacsimile to (301) 504-0127. All comments and submissions should be received no later than October 20, 2008.

List of Subjects in 16 CFR Part 1500

Consumer protection, labeling.

Conclusion

Under authority of section 3 and section 105 of the Consumer Product Safety Improvement Act, Public Law 110-314, 122 Stat. 3016 (August 14, 2008), the Commission proposes to amend Title 16, Chapter II, Subchapter C, Part 1500 as set forth below.

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261-1278.

2. Section 1500.20 is added to read as follows:

§ 1500.20 Labeling requirement for advertising toys and games.

(a) *Scope.* This section applies to advertisements (including catalogues, other printed materials, and Internet Web sites), which provide a direct means of purchase or order of products requiring cautionary labeling under sections 24(a) and (b) of the FHSA.

(b) *Effective Date.* The effective date of this standard with respect to catalogues and other printed materials is February 10, 2009. The Commission is providing a grace period of 180 days, or until August 9, 2009, during which catalogues and other printed materials printed prior to February 10, 2009 may be distributed. All catalogues and other printed materials distributed on or after August 9, 2009 must comply with the standard, regardless of when they were

printed. The effective date of this standard with respect to Internet Web sites is December 12, 2008.

(c) *Definitions.* For the purposes of this section, the following definitions shall apply.

(1) *Ball* means a spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes a multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball. The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar other containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the outer container.

(2) *Small ball* means a ball that, under the influence of its own weight, passes in any orientation, entirely through a circular hole with a diameter of 1.75 inches (44.4 mm) in a rigid template ¼ inches (6 mm) thick. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (44.4 mm).

(3) *Latex balloon* means a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities such as rafts, water wings, swim rings, or other similar items.

(4) *Marble* means a ball made of hard material, such as glass, agate, marble, or plastic, that is used in various children's games, generally as a playing piece or marker. The term "marble" does not include a marble permanently enclosed in a toy or game. A marble is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the toy or game.

(5) *Small part* means any object which, when tested in accordance with the procedures contained in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR part 1501. The use and abuse testing provisions of 16 CFR 1500.51 through 1500.53 and 1501.4(b)(2) do not apply to this definition.

(6) *Direct means of purchase or order* means any method of purchase that

allows consumers to order the product without being in the physical presence of the product. Advertising that provides a direct means of purchase or order of a product would include catalogues or other printed advertising material that contain order blanks, telephone numbers or fax numbers for placing orders, and Internet Web sites that enable consumers to purchase a

product online or through the use of a telephone number or fax number provided on the Internet Web site.

(d) *Advertising requirements.* Any toy or game that requires a cautionary statement about the choking hazard associated with small parts, balloons, small balls, or marbles must bear that cautionary statement in the product's advertising if the advertising provides a

direct means for the consumer to purchase or order the product.

(1) The advertising for any article that is a toy or game intended for use by children who are at least three years old but less than six years of age shall bear or contain the following cautionary statement if the toy or game includes a small part:

FIGURE 1

**WARNING:**

**CHOKING HAZARD--Small parts
Not for children under 3 yrs.**

(2) The advertising for any latex balloon, or toy or game that contains a

latex balloon, shall bear the following cautionary statement:

FIGURE 2

**WARNING:**

**CHOKING HAZARD--Children under 8 yrs. can
choke or suffocate on uninflated or broken balloons.
Adult supervision required.**

**Keep uninflated balloons from children.
Discard broken balloons at once.**

(3)(i) The advertising for any small ball intended for children three years of

age or older shall bear the following cautionary statement:

FIGURE 3

**WARNING:**

**CHOKING HAZARD--This toy is a small ball.
Not for children under 3 yrs.**

(ii) The advertising for any toy or game intended for children who are at

least three years old but less than eight years of age that contains a small ball

shall bear the following cautionary statement:

FIGURE 4

**WARNING:**

**CHOKING HAZARD--Toy contains a small ball.
Not for children under 3 yrs.**

(4)(i) The advertising for any marble or older shall bear the following
intended for children three years of age cautionary statement:

FIGURE 5

**WARNING:**

**CHOKING HAZARD--This toy is a marble.
Not for children under 3 yrs.**

(ii) The advertising for any toy or years of age that contains a marble shall
game intended for children who are at bear the following cautionary statement:
least three years old but less than eight

FIGURE 6

**WARNING:**

**CHOKING HAZARD--Toy contains a marble.
Not for children under 3 yrs.**

(e) Abbreviated warnings for catalogues and other printed materials. Abbreviated versions of the required cautionary statements are permitted in each individual product advertisement, provided that these abbreviated cautionary statements are defined with

full cautionary statements at the bottom or top of each catalogue page (or extending across the bottom or top of two facing catalogue pages if both pages contain products available for purchase).

(1) If abbreviated cautionary statements are used in each individual product advertisement, the following cautionary statements shall be used:

(i) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(1):

FIGURE 7

⚠ SMALL PARTS. Not for < 3 yrs.

(ii) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(2):

FIGURE 8

⚠ BALLOON. Not for < 8 yrs.

(iii) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(3)(i) or (ii):

FIGURE 9

⚠ SMALL BALL. Not for < 3 yrs.

(iv) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(4)(i) or (ii):

FIGURE 10

⚠ MARBLE. Not for < 3 yrs.

(2) If abbreviated cautionary statements are used in each individual product advertisement, the following definitions shall appear at the bottom or top of each catalogue page (or extending

across the bottom or top of two facing catalogue pages if both pages contain products available for purchase) that includes the abbreviated cautionary statement:

(i) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(1):

FIGURE 11

⚠ SMALL PARTS. Not for < 3 yrs.:

⚠ WARNING:
CHOKING HAZARD--Small Parts.
Not for children under 3 yrs.

(ii) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(2):

FIGURE 12

⚠ BALLOON. Not for < 8 yrs.:

⚠ WARNING:
CHOKING HAZARD--Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.
Keep uninflated balloons from children.
Discard broken balloons at once.

(iii) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(3)(i) or (ii):

FIGURE 13

▲ SMALL BALL. Not for < 3 yrs.:

▲ WARNING:
CHOKING HAZARD--This toy is or contains a small ball. Not for children under 3 yrs.

(iv) For any article that would require the cautionary statement specified in 16 CFR 1500.20(d)(4)(i) or (ii):

FIGURE 14

▲ MARBLE. Not for < 3 yrs.:

▲ WARNING:
CHOKING HAZARD-- This toy is or contains a marble. Not for children under 3 yrs.

(f) Prominence and conspicuousness of labeling statements. The requirements of 16 CFR 1500.121 relating to the prominence and conspicuousness of precautionary labeling statements for hazardous substances shall apply to any labeling statement required under 16 CFR 1500.20(d) and (e), with the following clarifications and modifications.

(1) Catalogues and other printed materials.

(i) All labeling statements shall be printed in type that is not smaller than 0.08 inches.

(ii) All labeling statements shall be printed in type that is not smaller than the largest of any other statements or text, other than the product or article name, in the individual and adjacent product advertisements.

(2) Internet Web sites.

(i) All labeling statements shall be printed in type that is not smaller than the largest of any other statements or text, other than the product or article name, in the advertisement.

(ii) All labeling statements shall be located immediately before any other statements or text in the advertisement that describes the function, use, or characteristics of the article being advertised (for example, the product description).

(3) Safety Alert Symbol. Any safety alert symbol required by this section

shall be an equilateral triangle. The height of the safety alert symbol shall be equal to or exceed the height of the letters of the signal word "WARNING". The height of the exclamation point inside the triangle shall be at least half the height of the triangle, and the exclamation point shall be centered vertically in the triangle. The safety alert symbol shall be separated from the signal word by a distance no larger than the space occupied by the first letter of the signal word. In all other respects, the safety alert symbol shall conform generally to the provisions of 16 CFR 1500.121 relating to signal words.

Note: The following appendix will not appear in the Code of Federal Regulations:

List of Relevant Documents

1. Memorandum from Robert Franklin, Directorate for Economic Analysis, to Barbara E. Parisi, Attorney, Office of General Counsel, "Economic Issues Associated with Section 105 of the Consumer Product Safety Improvements Act of 2008 (Concerning the inclusion of Cautionary Labeling for Toys and Games in Catalogs and Other Printed Materials)," September 16, 2008.

2. Memorandum from Timothy P. Smith, Engineering Psychologist, Division of Human Factors, Directorate for Engineering Sciences, to Barbara

Parisi, Regulatory Affairs Attorney, Office of the General Counsel, "Size and Placement of Cautionary Statements Specified in Section 105, Labeling Requirement for Advertising Toys and Games, of the Consumer Product Safety Improvement Act of 2008," September 15, 2008.

Dated: September 30, 2008.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. E8-23543 Filed 10-3-08; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2008-0995]

RIN 1625-AA09

Drawbridge Operation Regulations; Intracoastal Waterway (ICW) Beach Thorofare, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations of the Route 30 Bridge, at

ICW mile 67.2, across Beach Thorofare at Atlantic City, NJ. This proposal would allow for the drawbridge to open on signal every hour during high transit periods in the summer months and to operate on an advance notice basis at all other times. The proposed changes would result in more efficient use of the bridge.

DATES: Comments and related material must reach the Coast Guard on or before December 5, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0995 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

www.regulations.gov.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0995), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0995) in the Search box, and click "Go>>." You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dvp), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine

that one would aid this rulemaking, we will hold one at a time and place to be specified in a notice published in the **Federal Register**.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) is responsible for the operation of the Route 30 Bridge, at ICW mile 67.2, across Beach Thorofare at Atlantic City, NJ.

In the closed-to-navigation position, the Route 30 Bridge has a vertical clearance of 20 feet, above mean high water. The existing operating regulation is set out in 33 CFR 117.733(e) which requires the draw to open on signal except that, year-round from 11 p.m. to 7 a.m. and, from November 1 through March 31 from 3 p.m. to 11 p.m., the draw need only open if at least four hours notice is given.

The NJDOT requested changes to the existing regulations for the Route 30 Bridge in an effort to provide more scheduled openings to accommodate the ever-increasing casino workforce and tourists and by limiting the number of openings to minimize vehicular traffic delays and accidents that may result from backups due to more frequent vessel openings, by requiring the hourly openings of draw span during the spring and summer months and to operate on an advance notice basis in the fall and winter months.

A review of the bridge logs for the past three years supplied by NJDOT revealed the morning rush (7 a.m. to 9 a.m.) is averaging a total of 11 openings/year from June through September and the evening rush (4 p.m. to 6 p.m.) is averaging a total of 15 openings/year from June through September. The average daily traffic count from 7 a.m. and 8 p.m. for the same period revealed between 700 and 3800 vehicles. This excess traffic causes increased bottlenecks and safety hazards. Anticipated bridge openings on the hour will help to decrease delays to the local workforce and tourists.

For the past three years, during the fall and winter months, the draw span averaged 23 vessel openings per year from November 1 through March 31 between 7 a.m. and 3 p.m.

Based on the above information, NJDOT has proposed to change the regulations to improve efficiency.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.733(e) by requiring hourly vessel openings of the draw span from 7 a.m. to 11 p.m. from April 1 through October 31. At all other times, the draw will continue to open on signal if four hours notice is given. This change will

result in a more efficient use of the bridge.

Regulatory Analysis

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Additionally, vessels that can safely transit under the bridge while the draw span is in a closed position may do so at any time.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule could affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessels that can safely transit under the bridge while the draw span is in a closed position may do so at any time. All other mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and the Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.733(e) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(e) The draw of the Route 30 Bridge across Beach Thorofare, mile 67.2 at Atlantic City, shall open on signal except that from April 1 through October 31 from 7 a.m. to 11 p.m., the draw need only open on the hour; At all other times, the draw need only open if at least four hours notice is given.

* * * * *

Dated: September 25, 2008.

N.O. Buschman,

Captain, Acting Commander, Fifth Coast Guard District.

[FR Doc. E8–23604 Filed 10–3–08; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–8]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing to conduct proceedings in accordance with provisions added by the Digital Millennium Copyright Act which provide that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

DATES: Written comments must be received no later than December 2, 2008. A notice of proposed rulemaking will be published in December 2008 that will identify proposed classes of works and solicit comments on those proposed classes, which will be due no later than February 2, 2009.

ADDRESSES: Electronic submissions should be made through the Copyright Office website: <http://www.copyright.gov/1201/comment-forms>; see section 3 of the SUPPLEMENTARY INFORMATION section for file formats and other information about electronic and non-electronic filing requirements. If a non-electronic submission is hand delivered by a private party, an original and ten copies of any comment must be delivered to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope

should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and ten copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If delivered by means of the United States Postal Service (see section 3 of the SUPPLEMENTARY INFORMATION about continuing delays), comments should be addressed to Copyright GC/I&R, PO Box 70400, Washington, DC 20024–0400. See SUPPLEMENTARY INFORMATION section for information about requirements and formats of submissions. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Principal Legal Advisor, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024–0400. Telephone: (202) 707–8380; telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Mandate for Rulemaking Proceeding

The Digital Millennium Copyright Act, Pub. L. 105–304 (1998), amended title 17 of the United States Code to add Chapter 12, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works.

Specifically, subsection 1201(a)(1)(A) provides, *inter alia*, that “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.”

Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention “shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3–year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title” as determined in this rulemaking.

Subparagraph (C) provides that every three years, the Librarian of Congress, upon the recommendation of the Register of Copyrights (who is to consult with the Assistant Secretary for Communications and Information of the Department of Commerce) must “make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works.” The Librarian, on the recommendation of the Register, has thus far made three determinations as to classes of works to be exempted from the prohibition. The exemptions promulgated by the Librarian in the first rulemaking were in effect for the 3-year period from October 28, 2000, through October 28, 2003. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64564 (2000) (hereinafter Final Reg. 2000). On October 28, 2003, the Librarian of Congress published the second determination as to classes of works to be exempted from the prohibition. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 68 FR 62011, 62013 (2003) (hereinafter Final Reg. 2003). The four exemptions created in the second anticircumvention rulemaking remained in effect for a 3-year period. On November 27, 2006, the Librarian of Congress published the third determination. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 FR 68472, 68480 (2006) (hereinafter Final Reg. 2006). The six exemptions established in the third anticircumvention rulemaking will remain in effect until October 28, 2009. All three of the previous determinations by the Librarian of Congress were made upon the recommendation of the Register of Copyrights following extensive rulemaking proceedings. This notice announces the initiation of the fourth section 1201 rulemaking required under 17 U.S.C. 1201(a)(1)(C).

2. Background

Title I of the Digital Millennium Copyright Act was, inter alia, the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative

history of Title I, *see* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 64 FR 66139, 66140 (1999) [<http://www.loc.gov/copyright/fedreg/1999/64fr66139.html>].

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) the conduct of “circumvention” of technological protection measures that control access to copyrighted works and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either “access” to a copyrighted work or that protects the “rights of the copyright owner,” if that device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent “access” or “the rights of the copyright owner,” are contained in sections 1201(a)(2) and 1201(b) respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

A. The Anticircumvention Provision at Issue

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place with the authority of the copyright owner to control access to the work. *See* the Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105-551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.” 17 U.S.C. 1201(a)(1)(A) (1998).

The relevant terms are defined:

(3) As used in this subsection—

(A) to “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work. 17 U.S.C. 1201(a)(3).

B. Scope of the Rulemaking

The statutory focus of this rulemaking is limited to one subsection of section 1201: the prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C) [<http://www.copyright.gov/title17/92chap12.html#1201>]. The Librarian of Congress has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). 17 U.S.C. 1201(a)(1)(E). Moreover, for a proposed exemption to be considered in this rulemaking, there must be a causal connection between the prohibition in 1201(a)(1) and the adverse effect on noninfringing uses.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control “access” to copyrighted works, *e.g.*, decryption or hacking of access controls such as passwords or serial numbers. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the “rights of the copyright owner,” *e.g.*, the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person having lawful access to a work circumvents a measure that prohibits printing or saving an electronic copy of an article, there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, *e.g.*, fair use. The trafficking in, inter alia, any device or service that enabled others to circumvent such a technological protection measure may, however, be actionable under section 1201(b).

On the other hand, because there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a “fail-safe mechanism” to monitor the effect of the anticircumvention provision in section 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is

authorized to monitor the effect of the prohibition against “access” circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. 17 U.S.C. 1201(a)(1)(C).

C. Burden of Proof

In the first rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has or is likely to have a substantial adverse effect on noninfringing uses of a particular class of works. It was determined that proponents of an exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. *See* Commerce Comm. Report, at 37 and *see also*, Final Reg. 2000, 65 FR at 64558.

The “substantial” adverse requirement has also been described as a requirement that the proponent of an exemption must demonstrate “distinct, verifiable, and measurable impacts,” and more than “de minimis impacts.” *See* Final Reg. 2003, 68 FR at 62013. Whatever label one uses, proponents of an exemption bear the burden of providing sufficient evidence under this standard to support an exemption. How much evidence is sufficient will vary with the factual context of the alleged harm. Further, proof of harm is never the only consideration in the rulemaking process, and therefore the sufficiency of the evidence of harm will always be relative to other considerations, such as, the availability of the affected works for use, the availability of the works for nonprofit archival, preservation, and educational purposes, the impact that the prohibition has on criticism, comment, news reporting, teaching, scholarship, or research, the effect of circumvention on the market for or value of copyrighted works, and any other relevant factors.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm currently exists or that it is “likely” to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are generally necessary in order to prove actual harm. The most compelling cases of actual harm will be based on first-hand knowledge of such problems.

Circumstantial evidence may also support a claim of present or likely harm, but such evidence must also reasonably demonstrate that a measure protecting access was the cause of the harm and that the adversely affected use was, in fact, noninfringing. “Likely” adverse effects may also support an exemption. This standard of “likelihood” requires proof that adverse effects are more likely than not to occur. Claims based on “likely” adverse effects cannot be supported by speculation alone. *See* Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, (hereinafter House Manager’s Report), at 6, (an exemption based on “likely” future adverse impacts during the applicable period should only be made “in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive.”). Conjecture alone is insufficient to support a finding of “likely” adverse effect. Final Reg. 2000, 65 FR at 64559. Although a showing of “likely” adverse impact will necessarily involve prediction, the burden of proving that the expected adverse effect is more likely than other possible outcomes rests firmly on the proponent of the exemption.

The identification of existing or likely problems is not, however, the end of the analysis. In order for an exemption of a particular class of works to be warranted, a proponent must show that such problems justify an exemption in light of all of the relevant facts. The identification of isolated or anecdotal problems will be generally insufficient to warrant an exemption. Similarly, the mere fact that the digital format would be more convenient to use for noninfringing purposes is generally insufficient factual support for an exemption. Further, purely theoretical critiques of section 1201 cannot satisfy the requisite showing. House Manager’s Report, at 6. Proponents of exemptions must show sufficient harm to warrant an exemption from the default rule established by Congress – the prohibition against circumvention.

There is a presumption that the section 1201 prohibition will apply to any and all classes of works, including previously exempted classes, unless a new showing is made that an exemption is warranted. Final Reg. 2000, 65 FR at 64558. Exemptions are reviewed de novo and prior exemptions will expire unless sufficient new evidence is presented in each rulemaking that the prohibition has or is likely to have an adverse effect on noninfringing uses.

The facts and argument that supported an exemption during any given 3-year period may be insufficient within the context of the marketplace in a different 3-year period. Similarly, proposals that were not found to justify an exemption in any particular rulemaking could find factual support in the context and on the record of another rulemaking.

Evidence in support or in opposition to an exemption should be contained in the initial comments or, after publication of the proposed classes in the **Federal Register**, in the comments on the proposed exemptions. The purpose of this rulemaking is to survey interested parties in the digital environment to discover whether section 1201(a)(1) is adversely affecting noninfringing uses of particular classes of copyrighted works. The proposals received in the initial comments will frame the inquiry throughout the rest of the rulemaking process. The comments submitted in response to this Notice of Inquiry will be posted on the Copyright Office website shortly after submission, and a Notice of Proposed Rulemaking identifying the classes of works proposed will be published in the **Federal Register** shortly thereafter.¹ The Notice of Proposed Rulemaking will invite copyright owners and other interested parties to offer their comments in support of or opposition to the proposed classes. Comments responsive to the proposed classes may also propose modest refinements to the proposed classes and supply additional evidence, but may not propose completely new classes of works. Since opponents to exemptions have only one comment period to provide written responses to the exemptions proposed, opponents should have sufficient notice of the exemptions to be addressed in the rulemaking. Copyright owners and other interested parties, however, should be vigilant in monitoring classes proposed in the initial comment period that may implicate their interests as such classes may be further refined in the ensuing rulemaking process.

The Office will post all of the comments, hearing transcripts, and other relevant material in this rulemaking proceeding, as the Office has done since the inception of this rulemaking proceeding, on the Copyright Office’s website at: www.copyright.gov/1201.2

¹ *See infra* for a discussion of proposals raised after the initial comment period has expired.

² If a comment includes attached material that appears to be protected by copyright and there is no indication that the material was attached with permission of the copyright owner, the attached material will not be placed on the Office’s website.

The Copyright Office will also conduct a series of hearings on the proposed exemptions in the Spring in Washington, DC and at a location or locations to be determined in California. These hearings will offer proponents and opponents of exemptions an opportunity to present arguments and answer questions from the Register and her staff. These hearings—the time, date and subject matter of which will be announced early in 2009—will not provide a forum in which to raise new proposals or to submit wholly new evidence. Evidence that demonstrates how a technological measure operates and affects noninfringing uses as well as evidence that is responsive to earlier disputes raised in the comment process is welcomed, and is encouraged, at these hearings. However, the hearings may not be used as a vehicle for surprise or to present untimely proposals.

The Register is also likely to pose post-hearing questions to specific parties or witnesses that participated in the rulemaking proceeding. These questions have historically sought clarification of legal and factual questions, including specific requests to explain the operation of a technological measure at issue. Such post-hearing questions should not be construed as a general public post-hearing comment phase—there simply will not be sufficient time to consider another round of general public comments by the statutory deadline for the announcement of the newly exempted classes—but rather are invitations addressed to specific witnesses who have offered testimony on an issue to provide further clarification in response to specific questions from the Register. The questions and the responses to the questions will be posted on the Copyright Office's website after the responses have been received.

D. Availability of Works in Unprotected Formats

Other statutory considerations must also be balanced with evidence of adverse effects attributable to the prohibition. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). This inquiry demands that the Register consider whether “works” protected by technological measures that control access are also available in the marketplace in formats that are unprotected. The fact that a “work” (in

contrast to a particular “copy” of a work) is available in a format without technological protection measures may be significant because the unprotected formats might allow the public to make noninfringing uses of the work even though other formats of the work would not. For example, in the first rulemaking, many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of the motion pictures. A balancing consideration was that the record revealed at that time that the vast majority of these works were also available in analog format on VHS tapes. Final Reg. 2000, 65 FR at 64568. Thus, the full range of availability of a work for use is necessary to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a distribution model that benefits the public generally. For example, while a measure may limit the length of time that a work may be accessed (time-limited) or may limit the scope of access (scope-limited), e.g., access to only a portion of work, those limitations may benefit the public by providing “use-facilitating” models that allow users to obtain access to works at a lower cost than they would otherwise be charged were such restrictions not in place. If there is sufficient evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this evidence must be considered. House Manager's Report, at 6. Accord, Final Reg. 2000, 65 FR at 64559. Thus, the Register's inquiry must assess any benefits to the public resulting from the prohibition as well as the adverse effects that may be established.

E. The Scope of the Term “Class of Works”

Section 1201 does not define a critical term for the rulemaking process: a “class of works.” With respect to this issue and others, commenters should familiarize themselves with the Register's recommendation and the Librarian's determination in the first rulemaking and in the subsequent two rulemakings, since many of the issues which were unsettled at the start of the first rulemaking have been addressed and developed in the three determinations. While the approach taken in resolving the issues raised in these rulemakings may continue to develop in this and subsequent proceedings, interested parties should

assume that the standards developed thus far will continue to apply in the current proceeding. Of course, commenters may argue for adoption of alternative approaches,³ but a persuasive case will have to be made to warrant reconsideration of previous decisions regarding interpretation of section 1201.

In the first rulemaking, the Register elicited views on the scope and meaning of the term “class of works.” After review of the statutory language, the legislative history and the extensive record in the proceeding [see Final Reg., 65 FR at 64557 for a description of the record in the last rulemaking proceeding], the Register reached certain conclusions on the scope of this term. [For a more detailed discussion, see Final Reg., 65 FR at 64559.]

The Register found that the statutory language required that the Librarian identify a “class of works” primarily based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or the users of the works. The phrase “class of works” connotes that the shared, common attributes of the “class” relate to the nature of authorship in the “works.” Thus a “class of works” was intended to be a “narrow and focused subset of the broad categories of works of authorship *** identified in section 102.” Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. *Id.*

Therefore, the Register concluded that the starting point for identifying a particular “class of works” to be exempted must be one of the section 102 categories. Final Reg., 65 FR at

³ Proponents of an exemption may do so in their comments proposing exemptions. Opponents of an exemption should do so in their comments filed in response to the forthcoming Notice of Proposed Rulemaking.

If such material is available on the Internet, the comment should identify where the material may be found.

64559–64561. From that starting point, it is likely that the scope or boundaries of a particular class would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

In the first anticircumvention rulemaking, the Register recommended and the Librarian agreed that two classes of works should be exempted:

- 1) Compilations consisting of lists of websites blocked by filtering software applications; and
- 2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsolescence.

While the first class exempted fits comfortably within the approach to classification discussed above, the second class includes the entire category of literary works, but narrows the exemption by reference to attributes of the technological measures that controls access to the works.

In the 2006 rulemaking, the Register determined that a further refinement of the approach to determining a particular class of works was warranted. Even though a class must begin, as its starting point, by reference to one of the categories of authorship enumerated in section 102 of the Copyright Act (or some subset thereof), that class should be further tailored to address the harm (actual or likely) alleged. The proper tailoring of a class will depend on the specific facts, but in some cases, the most appropriate manner of further tailoring the category or sub-category may be to limit the class in relation to particular uses or users.

The impetus for this refinement was a proposed exemption for film and media studies professors. The proponents of the exemption demonstrated that the reproduction and public performance of short portions of motion pictures or other audiovisual works in the course of face-to-face teaching activities of a film or media studies course would generally constitute a noninfringing use. The proponents further demonstrated that the digital version of the motion pictures distributed on DVDs was not merely a preferred format, but that the digital version of these works was the only version of the work that met the pedagogical needs of the film and media studies professors. The proponents of the exemption also demonstrated that their otherwise noninfringing uses of the digital versions of these motion pictures were adversely affected by the prohibition on circumvention of technological measures protecting access to these works, because the

Content Scrambling System (CSS) contained on most commercially released DVDs was an access control system that prevented the making of a compilation of film clips for classroom use. Although opponents of the exemption demonstrated a DVD player that was alleged to meet the pedagogical needs of educators, the device presented obstacles for classroom use that were found to be more than a mere inconvenience for a subset of users – film and media studies professors.

The proponents met their burden of proving that section 1201(a)(1) was adversely affecting film and media studies educators' ability to engage in noninfringing uses for the ensuing 3-year period and that no reasonable substitute for the pedagogically beneficial digital content was available or likely to become available in the next three years. The opponents of the proposal expressed concern that if the proposed class of works—audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use—was based only on attributes of the work itself, the exemption would necessarily exempt a much broader range of uses than those in which the film professors wished to engage. Moreover, copyright owners were concerned that such an exemption would create public confusion about the circumstances in which circumvention was appropriate. Given the expanse of such a class of works and the adverse effects that could occur as a result of confusion about the class, copyright owners argued that overall harm of such an exemption would outweigh the marginal benefits to this subset of educators.

The Register concluded that a further refinement of the scope of a class of works was the proper balance to the valid concerns of both educators and copyright owners. By delineating the class in relation to the relevant noninfringing use proven to be, or likely to be, adversely affected by the prohibition on circumvention, film and media studies educators' needs could be met while leaving the statutory prohibition against circumvention intact for that class with respect to other uses.

In all proposed exemptions, the starting point for a class of works must be a section 102 category of authorship, or a subset thereof. That category or subset should then be tailored by other criteria as appropriate under the particular facts presented. The goal is to fashion an exemption that is neither too narrow nor too broad to remedially address the evidence of present and

likely harm. An appropriately fashioned exemption will assist users and copyright owners alike, by temporarily suspending the prohibition on circumvention for appropriately tailored adversely affected classes, while preserving the prohibition in all other classes.

The exemptions published for each three-year period are temporary and expire when the succeeding determination of the Librarian of Congress is published. This rulemaking will examine adverse effects existing in the marketplace or likely to exist in the next three-year period to determine whether any exemptions to the prohibition on circumvention of technological protection measures that effectively control access to copyrighted works are warranted by the evidence raised during this rulemaking.

F. Considerations to Address within a Comment

This notice requests written comments from all interested parties. In addition to the necessary showing discussed above, in order to make a prima facie case for a proposed exemption, certain critical points should be established. First, a proponent should identify the technological measure that is the ultimate source of the alleged problem, and the proponent should explain how the technological measure effectively controls access to a copyrighted work. Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing. Third, a proponent should establish that the prevented activity is, in fact, a noninfringing use under current law. A proponent should also demonstrate why the access-protected copy of a work is needed for the noninfringing use and why alternate means of engaging in the noninfringing uses (including use of available copies of the work in unprotected formats), if they exist, are an insufficient substitute for accomplishing the noninfringing use.

The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined by the Register of Copyrights:

- (i) the availability for use of copyrighted works;
- (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate.

17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced with the harm that would result from an exemption. In some circumstances, the adverse effect of a proposed exemption in light of these considerations may be greater than the harm posed by the prohibition on circumvention of works in the proposed class. Perhaps the proper balance can be resolved by carefully tailoring the scope of the class, but ultimately, the determination of the Librarian must take all of these factors into account.

3. Written Comments

In the first rulemaking, the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. In this fourth triennial rulemaking, the Register shall continue with the procedure adopted in the second and third rulemakings: Comments submitted in the initial comment period should be confined to proposals for exempted classes. They should specifically identify particular classes of works adversely affected by the prohibition and provide evidentiary support for the need for the proposed exemptions (see section F above).

For each particular class of works that a commenter proposes for exemption, the commenter should first identify that class, followed by a summary of the argument in favor of exempting that proposed class. The commenter should then specify the facts and evidence providing a basis for this exemption. This factual information should ideally include the technological measure that controls access and the manner in which this technological measure operates to control access to a copyrighted work. Finally, the commenter should state any legal arguments in support of the exemption, including the activity that is claimed to be noninfringing, the legal basis for this claim, and why this noninfringing activity cannot be accomplished in other ways. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or specific instances in which the prohibition on circumvention of technological

measures protecting access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the present or likely problem.

Comments subsequently submitted in response to exemptions proposed in the first round of comments should provide factual information and legal argument addressing whether or not a proposed exemption should be adopted. Since the comments in this second round are intended to be responsive to the initial comments, commenters must identify which proposal(s) they are responding to, whether in opposition, support, amplification or correction. As with initial comments, these responsive comments should first identify the proposed class or classes to which the comment is responsive, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each comment responsive to a particular class of work proposed.

Regardless of the mode of submission (see section 4 below), all comments must, at a minimum, contain the legal name of the submitter and the entity, if any, on whose behalf the comment was submitted. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, comments should not include such information on the document itself but should only include the legal name of the commenter. The Office prefers that all comments be submitted in electronic form and the electronic form will provide a place to provide the required information separately from the attached comment submission. However, the Office recognizes that persons may be unable to submit their comments through the Office's website or to deliver their comments in person. Therefore, comments may also be delivered through the United States Postal Service, addressed to the Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Washington, DC 20024-0400. A comment submitted by mail or hand-delivery should include a cover sheet that includes the required information about the submitter (e.g., address, telephone, and email) and should not include this information in the comment itself if such information is not desired to be placed on the Copyright Office's website. Due to mail screening on Capitol Hill and possible delays in delivery, submission by means of the United States Postal Service is discouraged and there is a risk that the

comment will not be received at the Copyright Office in time to be considered. Electronic filing or hand-delivery will help ensure timely receipt of comments by the Office. Electronic comments successfully submitted through the Office's website will generate a confirmation receipt to the submitter.

4. Submission of Comments

Comments may be submitted in the following ways:

If submitted through the Copyright Office's website: The Copyright Office's website will contain a submission page at: <http://www.copyright.gov/1201/comment-forms>. Approximately thirty days prior to each applicable deadline (see DATES), the form page will be activated on the Copyright Office website allowing information to be entered into the required fields, including the name of the person making the submission, mailing address, telephone number, and email address. There will also be non-required fields for, e.g., the commenter's title, the organization that the commenter is representing, whether the commenter is likely to request to testify at public hearings and if so, whether the commenter is likely to prefer to testify in Washington, DC, or a location in California. In addition, commenters proposing classes of works in the first round of comments will be required to fill in two additional fields: (1) the proposed class or classes of copyrighted work(s) to be exempted, and (2) a brief summary of the argument(s). Commenters submitting comments in response to the initial proposals will similarly be required to fill in two additional required fields: (1) the class or classes to which the comment is responsive, including the initial comment numbers, and (2) a brief summary of the argument.

All comments submitted electronically must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), Microsoft Word Version 2003 or earlier, WordPerfect 12.0 or earlier, Rich Text Format (RTF), or ASCII text file format. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office.

The personal information entered into the required fields on the form page will not be publicly posted on the Copyright Office website, but the Office intends to post on its website the name of the proponent, the proposed class and the summary of the argument, as well as the entire, attached comment document.

Only the commenter's name is required on the comment document itself and a commenter who does not want other personal information posted on the Office's website should avoid including other personal information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the permanent public record of this rulemaking.

If submitted by means of the United States Postal Service or hand delivery:

a. Electronic copies: Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette or CD-ROM, labeled with the legal name of the person making the submission and the entity on whose behalf the comment was submitted, if any. The document itself must be in a single file in either Adobe Portable Document File (.pdf) format (preferred), Microsoft Word Version 2007 or earlier (.doc or .docx), WordPerfect Version 12.0 or earlier (.wpd), Rich Text Format (.rtf), or ASCII text file (.txt) document. If the comment is hand delivered or mailed to the Office and the submitter does not wish to have the address, telephone number, or email address publicly displayed on the Office's website, the comment should not include such information on the document itself, but only the name and affiliation, if any, of the commenter. In that case, a cover letter should be included with the comment that contains the commenter's address, phone number, email address, and for initial comments, the proposed class of copyrighted work to be exempted and a brief summary of the argument.

b. Paper copies: Anyone who is unable to submit a comment in electronic form (on the website as an attachment or by means of the United States Postal Service or hand delivery on disk or CD-ROM) should submit an original and ten paper copies by hand or by means of the United States Postal Service to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

General Requirements for all submissions: All submissions (in either electronic or non-electronic form delivered through the website, by means of the United States Postal Service by hand-delivery or by courier) must contain on the comment itself, the name of the person making the submission and his or her title and affiliation, if the comment is being submitted on behalf of that organization. The mailing address, telephone number, fax number, if any, and email address need not be included on the comment itself, but

must be included in some form, *e.g.*, on the website form or in a cover letter with the submission. All submissions must also include the class/summary/factual and/or legal argument format in the comment itself for each class of work proposed or for each comment responsive to a proposed exemption.

Comments will be accepted for a 30-day period, and a form will be placed on the Copyright Office website at least 30 days prior to the deadline for submission. Initial comments will be accepted from November 3, 2008, until December 2, 2008, at 5:00 P.M. Eastern Standard Time, at which time the submission form will be removed from the website. The deadline for the second round of comments will be announced in the Notice of Proposed Rulemaking to be published in December, and will probably be on or about February 2, 2008.

5. Hearings

As mentioned above, after the conclusion of the comment periods, the Register intends to hold public hearings in the Spring in Washington, DC and in California. The Washington, DC hearings will most likely take place in the James Madison Memorial Building of the Library of Congress. The dates and confirmed location of hearings in Washington, DC and California, have not yet been determined. A separate notice for details on all hearings in this rulemaking proceeding will be published at a later time in the **Federal Register** and on the Copyright Office's website. In order to assist the Copyright Office in identifying the number of days for hearings, the comment form page will contain non-required fields asking whether the commenter is likely to request to testify and if so, in which location. Formal requests to testify will be solicited early in 2009.

As noted above, following the hearings, the Copyright Office may request additional information from parties who have been involved in the rulemaking process. Such requests for responses to questions will take the form of a letter from the Copyright Office and will be addressed to particular parties involved in an issue in which more information is sought. These inquiries will include deadlines based on when the requests for information are sent. After the receipt of all responses to all inquiries from the Copyright Office, the Office will post the questions, the parties to whom the questions were sent, and the responses on the Copyright Office's website.

6. Process for Untimely Submissions based on Exceptional or Unforeseen Circumstances

To provide sufficient flexibility in this proceeding, in the event that unforeseen developments occur after the deadlines for the filing of initial comments, a person wishing to propose an exemption for a particular class of works after the specified deadline for initial comments may petition the Register to consider an additional exemption. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also be accompanied by ten copies of a comment that meets the requirements for initial comments set forth in section 3 above, any new proposed exemption that includes the proposed class of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. These materials must be delivered to the Copyright Office at the address listed above. A person wishing to file any other untimely submission may also petition the Register to consider such submission, but such untimely submissions will be disfavored. Exceptional or unforeseen circumstances generally entail information that did not exist at the time of the comment periods. The Register will make a determination whether to accept a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. A substantively meritorious petition may be denied if the petition comes so late in the process that adequate notice and comment cannot be accommodated within the statutory time frame of the rulemaking process. The mere fact that an interested party was unaware of this proceeding or of any particular exemptions proposed in this proceeding is not a valid justification for a late submission. If a petition is accepted, the Register will publish the proposal in the **Federal Register** and announce deadlines for comments. If a petition is denied, the Register will set forth the reasons for the denial in a letter to the petitioner. All petitions and responses will become part of the public record in this rulemaking process.

October 1, 2008

Marybeth Peters,

Register of Copyrights.

[FR Doc. E8-23576 Filed 10-3-08; 8:45 am]

BILLING CODE 1410-33-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA-HQ-OAR-2005-0159; FRL-8725-4]

RIN 2060-AP28

The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule): Revised Exceptional Event Data Flagging Submittal and Documentation Schedule for Monitoring Data Used in Designations for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Exceptional Events Rule to provide a revised exceptional event data flagging and documentation schedule for ozone data that may be used for designations under the 2008 ozone national ambient air quality standards (NAAQS). The Exceptional Events Rule states that when EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, EPA may revise or set a new schedule for flagging data for those NAAQS. EPA recently revised the primary and secondary ozone NAAQS to protect public health and welfare; the revised standards became effective May 27, 2008. Consistent with the process envisioned in the Exceptional Events Rule, this proposal revises the dates for flagging data and submitting documentation regarding exceptional events under the revised ozone NAAQS. This revised schedule allows EPA to fully consider state requests for exceptional event concurrence prior to EPA making final designations.

In the "Rules" section of this **Federal Register**, we are issuing this action as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: *Comments.* Written comment must be received November 20, 2008.

Public Hearing. If anyone contacts us requesting a public hearing by October 16, 2008, we will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0159, by one of the following methods:

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

- *E-mail:* a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2005-0159.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2005-0159.

- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2005-0159, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334; Washington, DC. 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-2005-0159. 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 and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Link, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-5456; fax number: 919-541-0824; e-mail address: link.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline

- I. Why Is EPA Issuing This Proposed Rule?
- II. Does This Action Apply to Me?
- III. What Should I Consider as I Prepare My Comments for EPA?
- IV. What Information Should I Know About the Public Hearing?
- V. What Is the Background for This Action?
- VI. What Is This Proposed Rule?
- VII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Why Is EPA Issuing This Proposed Rule?

This action provides for a revised schedule to flag data and submit documentation related to exceptional events that influence ozone data which may affect designations under the recently revised ozone NAAQS. This

action creates no additional regulatory requirements compared to those already promulgated in the Exceptional Events Rule. We have published a direct final rule making such amendments in the "Rules" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If EPA receives an adverse comment, we will take no further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory test for this proposal is identical to that for the direct final rule published in the "Rules" section of this **Federal Register**. For further information and detailed rationale for this proposal, see the information provided in the direct final rule.

II. Does This Action Apply to Me?

States are responsible for identifying air quality data that they believe warrant special consideration, including data affected by exceptional events. States identify such data by flagging (making a notation in a designated field in the electronic data record) specific values in the Air Quality System (AQS) database. States must flag the data and submit a justification that the data are affected by exceptional events if they wish EPA to consider excluding the data in determining whether or not an area is attaining the revised ozone NAAQS.

All states that include areas that could exceed the ozone NAAQS and could therefore be designated as nonattainment for the ozone NAAQS have the potential to be affected by this rulemaking. Therefore, this action applies to all states; to local air quality agencies to which a state has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and, to Tribal air quality agencies where appropriate. The Exceptional Events Rule describes in greater detail to whom the Rule applies in 72 FR at 13562–13563 (March 22, 2007).

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.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 to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. What Information Should I Know About the Public Hearing?

EPA will hold a hearing only if a party notifies EPA by October 16, 2008, expressing its interest in presenting oral testimony on issues addressed in this notice. Any person may request a hearing by calling Mrs. Pamela Long at (919) 541–0641 before 5 p.m. by October 16, 2008. Persons interested in presenting oral testimony should contact Mrs. Pamela Long at (919) 541–0641. Any person who plans to attend the hearing should also contact Mrs. Pamela S. Long at (919) 541–0641 to learn if a hearing will be held.

If a public hearing is held on this notice, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. Because the hearing will be held at a U.S. Government facility, everyone

planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room.

If held, the public hearing will begin at 10 a.m. and end 1 hour after the last registered speaker has spoken. The hearing will be limited to the subject matter of this document. Oral testimony will be limited to 5 minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in this notice. The EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

V. What Is the Background for This Action?

The Exceptional Events Rule (Treatment of Data Influenced by Exceptional Events (72 FR 13560, March 22, 2007)) sets a schedule for states to flag monitored data affected by exceptional events in AQS and for them to submit documentation to demonstrate that the flagged data were impacted by an exceptional event. Under this schedule, a state must initially notify EPA that data have been affected by an exceptional event by July 1 of the year after the data are collected; this is accomplished by flagging the data in AQS. The state must also include an initial description of the event when flagging the data. In addition, the state is required to submit a full demonstration to justify exclusion of such data within three years after the quarter in which the data were collected, or if a regulatory decision based on the data (such as a designation action) is anticipated, the demonstration must be submitted to EPA no later than one year before the decision is to be made.

However, the rule also authorizes EPA to revise data flagging and documentation schedules for the initial designation of areas under a new or revised NAAQS. This generic schedule, while appropriate for the period after initial designations have been made under a NAAQS, may need adjustment when a new or revised NAAQS is

promulgated because until the level and form of the NAAQS have been promulgated a state would not have complete knowledge of the criteria for excluding data. In these cases the generic schedule may preclude states from submitting timely flags and associated documentation for otherwise approvable exceptional events. This could, if not modified, result in some areas receiving a nonattainment designation when the NAAQS violations were legitimately due to exceptional events.

For example, EPA finalized new standards for ozone of 0.075 ppb on March 12, 2008 with an effective date of May 27, 2008. In accordance with CAA Section 107(b), state Governors must provide their recommendations to EPA by March 12, 2009 on designating areas as attainment, nonattainment, or unclassifiable with the new standards. States will base their recommendations on the three most recent years of quality-assured air quality data, which could be ozone data collected between calendar years 2006–2008, or 2005–2007. EPA must complete final area designations for these new standards by March 12, 2010. EPA will base its designations decisions on the three most recent years of quality-assured air quality data for each area which would be ozone data collected during calendar years 2007–2009 where states have submitted quality assured ozone data for 2009. However, in some cases the most recent complete data may cover 2006–2008 or 2005–2007. In this example the generic exceptional event flagging schedule for 2005 and 2006 data has already passed and the flagging deadline for exceptional events that occurred in 2007 would be July 1, 2008—approximately 33 days after the effective date of the revised NAAQS. In addition, the generic schedule would require

states to submit demonstrations for 2009 data influenced by exceptional events no later than March 12, 2009, one year before the final designation decisions. This is clearly not possible for air quality data collected from March 13, 2009 to December 31, 2009.

EPA is, therefore, using the authority provided in the Exceptional Events Rule at 40 CFR 50.14(c)(2)(v), to modify the schedule for data flagging and submission of demonstration for exceptional events data considered for initial designations under the 2008 revised ozone NAAQS.

VI. What Is This Proposed Rule?

This proposed rule amends the Exceptional Events Rule by providing a revised exceptional event data flagging and documentation schedule regarding claimed exceptional events affecting ozone monitoring data that will be compared to the 2008 revised ozone NAAQS for the purpose of initial ozone designations. In some cases, EPA is extending the otherwise applicable deadline for states to flag data and submit documentation. In other cases, EPA is shortening the otherwise applicable schedule to assure that the exceptional events claims can be fully considered by EPA in the designations decisions.

For air quality data collected in the years 2005 through 2007, this revised schedule extends the generic schedule for flagging data (and providing a brief initial description of the event) from July 1 of the year following the year the data are collected, to December 31, 2008. For data collected in 2008, the revised schedule extends the generic schedule for flagging data and providing a brief initial description of the event to March 12, 2009, to coincide with the deadline for state Governors to submit designation recommendations to EPA.

The deadline for submitting to EPA a detailed demonstration to justify exclusion of data collected in 2005 through 2008 is also being set to March 12, 2009. The deadline for submitting to EPA flagged data with initial descriptions and a detailed demonstration to justify exclusion of data collected in 2009 is being set to January 8, 2010. For data collected in 2008 and 2009 this would give a state less time, but EPA believes still sufficient time, to decide what 2008 and 2009 data to flag, and would allow EPA to have access to the flags and supporting data in time for EPA to develop its own proposed and final plans for designations. (If EPA has insufficient information and extends the designations date beyond March 2010, a new event flagging deadline and detailed documentation submission deadline will be published.) While the new deadlines for submission of a state’s demonstration for data collected in 2009 is less than a year before the designation decisions would be made, EPA believes it is a reasonable approach between giving states a reasonable period to prepare the justifications, and EPA a reasonable period to consider the information submitted by the state. With this proposed rule EPA amends section 50.14(c)(2)(v) to add a tabular schedule of data submittal deadlines, by pollutant, for new or revised NAAQS standards. (PM_{2.5} data submittal schedules revised in March 2007 and presented in this table are for informational purposes only. EPA is not taking further comment on the PM_{2.5} data submittal schedule published in 72 FR 13560, March 22, 2007.) EPA anticipates providing amendments to the following table to add data submission schedules for new or revised NAAQS standards in the future.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
PM _{2.5} 24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006	2004–2006	October 1, 2007 ^a	April 15, 2008 ^a .
Ozone/8-Hr Standard (0.075 ppb) Promulgated March 12, 2008 ...	2005–2007	December 31, 2008 ^b	March 12, 2009 ^b .
	2008	March 12, 2009 ^b	March 12, 2009 ^b .
	2009	January 8, 2010 ^b	January 8, 2010 ^b .

^a These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

^b Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines only applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it is likely to raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, where burden is defined at 5 CFR 1320.3(b). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, it does not impose an information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule modifies previously

established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, it does not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state local or tribal governments or the private sector. This action modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

This proposal does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule modifies previously established

deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of modifying previously established deadlines under the Exceptional Events Rule.

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

This action is not a “significant energy action” as defined in Executive Order 13211(66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action modifies previously established deadlines under the Exceptional Events Rule.

I. National Technology Transfer Advancement Act

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 30, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8-23524 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2005-0534; FRL-8725-3]

Approval and Promulgation of Implementation Plans North Carolina: Prevention of Significant Deterioration and Nonattainment New Source Review Rules; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published September 9, 2008 (73 FR 52226). On September 9, 2008, EPA proposed to approve revisions to the

North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina in three submittals dated November 30, 2005, March 16, 2007, and June 20, 2008. The proposed revisions modify North Carolina's Prevention of Significant Deterioration and Nonattainment New Source Review permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). In addition, the proposed revisions address an update to the NSR regulations promulgated by EPA on November 29, 2005 ("Ozone Implementation NSR update") relating to the implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). At the request of several commentors, EPA is extending the comment period through November 10, 2008.

DATES: Written comments must be received on or before November 10, 2008.

ADDRESSES: Comments should be submitted to: Ms. Yolanda Adams, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9214; e-mail address: adams.yolanda@epa.gov. Additional instructions to comment can be found in the notice of proposed rulemaking published September 9, 2008 (73 FR 52226).

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina State Implementation Plan, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9140; e-mail address: ward.nacosta@epa.gov. For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562-9214; e-mail address: adams.yolanda@epa.gov.

Dated: September 26, 2008.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8-23553 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2006-0649; FRL-8725-2]

Approval and Promulgation of Implementation Plans; Georgia; Prevention of Significant Deterioration and Nonattainment New Source Review Rules; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published September 4, 2008 (73 FR 51606). On September 4, 2008, EPA proposed to partially approve and disapprove portions of revisions to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The proposed revisions modify Georgia's Prevention of Significant Deterioration and Nonattainment New Source Review permitting rules in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the "2002 NSR Reform Rules"). At the request of several commentors, EPA is extending the comment period through November 5, 2008.

DATES: Written comments must be received on or before November 5, 2008.

ADDRESSES: Comments should be submitted to: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9117; e-mail address: fortin.kelly@epa.gov. Additional instructions to comment can be found in the notice of proposed rulemaking published September 4, 2008 (73 FR 51606).

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia State Implementation Plan, contact Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9042;

e-mail address: harder.stacy@epa.gov. For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: fortin.kelly@epa.gov.

Dated: September 26, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8-23554 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 403

RIN 1006-AA53

Bureau of Reclamation Loan Guarantees

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) proposes this rule establishing eligibility criteria and program requirements for loan guarantees authorized by the Twenty-first Century Water Works Act (Title II of Pub. L. 109-451; 43 U.S.C. 2421-2434) (Act). This rule is intended to define for potential participants how the loan guarantees authorized by the Act will be administered. The Act authorizes the Secretary of the Interior (Secretary) to make loan guarantees for three categories of projects:

Category (A) projects are rural water supply projects as defined in section 102(9) of the Reclamation Rural Water Supply Act of 2006 (Title I of Pub. L. 109-451; 43 U.S.C. 2401-2409) (Rural Water Supply Act of 2006);

A category (B) project is an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility that is authorized by Federal reclamation laws and constructed by the United States under such law; or in connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

A category (C) project is an improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary improves water management; and fulfills other Federal goals.

For purposes of this rule, these will be referred to as category (A), (B), or (C)

projects. The Act provides that, subject to the availability of appropriations, the Secretary of the Interior may provide loan guarantees for eligible projects. The Act requires the Secretary to develop criteria for determining the eligibility of a project for financial assistance, and to publish them in the **Federal Register**.

The intent of this rulemaking is to meet this requirement, as well as to define for potential participants how the loan guarantee will be administered.

Reclamation will administer the program. Reclamation will take into account the comments on this rule in developing final regulations. Reclamation recognizes that the rule will be modified in the future to more specifically address category (A) projects and to address modifications in administration as a result of experience gained through the first requests.

DATES: Submit comments on the rule by November 5, 2008. The Office of Management and Budget has up to 60 days to approve the information collection in this rule, but may respond after 30 days; therefore public comment on the information collection must be received on or before November 5, 2008. Reclamation plans to hold informational meetings on the proposed rule and program.

ADDRESSES: You may submit comments on this rule, identified by the number 1006-AA53, by one of the following methods:

—*Use of the Federal rulemaking Web site:* <http://www.regulations.gov>. Search on docket identification number BOR-2008-0005 when submitting comments on this rule. Follow the instructions for submitting comments.

—*By mail to:* Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Building 67, Denver CO 80225, Attention: Randy Christopherson, Mail Code 84-55000. Please include the number 1006-AA53 in your correspondence.

Please submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395-6566, or e-mail to OIRA_DOCKET@omb.eop.gov. A copy of your comments should also be directed to the Bureau of Reclamation, attention Randy Christopherson at the contact information.

You can obtain copies of the information collection forms by contacting us as specified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Randy Christopherson, Bureau of Reclamation, P.O. Box 25007, Mail Code: 84-55000, Denver, CO 80225. Telephone: (303) 445-2729. E-mail: rchristopherson@do.usbr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Act, enacted as Title II of Public Law 109-451 on December 22, 2006, authorizes the Secretary to issue loan guarantees to assist non-federal borrowers in financing (A) rural water supply projects; (B) extraordinary maintenance and rehabilitation of Reclamation project facilities; and (C) improvements to infrastructure directly related to a Reclamation project. For purposes of these loan guarantees, the Act defines the authorized non-federal borrower as (a) a State (including a department, agency, or political subdivision of a State); or (b) a conservancy district, irrigation district, canal company, water users' association, Indian tribe, an agency created by interstate compact, or any other entity that has the capacity to contract with the United States.

Authority and responsibility for implementing the provisions of the Act are delegated to Reclamation. Reclamation's rulemaking will establish the eligibility criteria and program requirements for loan guarantees authorized by the Act. Reclamation expects to supplement these rules in the future with eligibility criteria and program requirements specific to those projects described in the Rural Water Supply Act of 2006 that are also deemed eligible for loan guarantees in accordance with section 202(6)(A). Section 202(6)(A) provides authority to issue loan guarantees for rural water supply programs (category A projects). The Rural Water Supply Act of 2006 defines the term rural water supply project to include incidental noncommercial livestock watering and noncommercial irrigation of vegetation and small gardens of less than 1 acre, and projects to improve rural water infrastructure. Rural water projects must receive approval from the Congress prior to construction and are subject to the availability of appropriations. Accordingly, Reclamation expects to target initial solicitations for guaranteed loans pursuant to the Act on Category B and Category C projects and on assistance for operation and maintenance rather than assistance with new construction.

Discussion of Proposed Rule

Section 203 of the Act requires the Secretary to develop criteria for determining the eligibility of a project for financial assistance, and to publish them in the **Federal Register**. The intent of this rule is to provide program requirements and eligibility criteria for both the non-federal borrower and lenders. The eligibility criteria must include (1) the lender's submission of an application to the Secretary; (2) demonstration of the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment; (3) demonstration by the non-federal borrower of its ability to repay the project financing from user fees or other dedicated revenue sources; (4) demonstration by the non-federal borrower of its ability to pay all operations, maintenance, and replacement costs of the project facilities; and (5) other criteria as the Secretary determines to be appropriate. Section 403.7 of this rule provides generally the requirements regarding what information must be included in an application and section 403.10 provides the criteria on which Reclamation will evaluate a non-federal borrower's application. Section 403.11 identifies the prioritization criteria that Reclamation will use to determine which loan guarantee applications will be selected to participate in the loan guarantee program.

We invite you to comment on all the requirements set forth in this rule, particularly regarding the appropriate requirements to provide protections to the financial interests of the United States. In addition, an information collection package has been prepared. The application for a loan guarantee identifies in more detail the supporting documentation that must accompany it, including: the current and previous 2 years financial and income statements; the operating budget for the current operating cycle, a financial feasibility analysis and projected budgets, including schedule of all current installment debt; preliminary project plans and detailed cost estimates; pro-forma cashflows; the proposed loan amortization schedule and documents outlining proposed terms and conditions of the debt to be guaranteed; the non-federal borrower's proposed environmental compliance actions; description of any debt; the lender's credit evaluation; a description of any security available for the loan; authorizing resolutions of certificates; and any other documents and

information the Secretary may request, including all documents and information relied upon by the lender in evaluating the non-federal borrower's initial loan request. The Act specifies eligibility criteria that must be included in subsection 203(a)(2). Section 203(b) of the Act, authorizes the Secretary to waive any of the criteria in subsection 203(a)(2) that the Secretary determines to be duplicative or unnecessary because of an action already taken by the United States. Reclamation would waive such criteria only in cases where the criteria have already been demonstrated to be satisfied.

Consistent with statutory requirement, demonstration of a borrowers' ability to repay the debt and continue operations and maintenance of its facility is a high priority of the loan guarantee program and must be demonstrated to the satisfaction of the Secretary. Reclamation will adopt policies to further establish guidance to ensure that borrowers and lenders use their best efforts to ensure the success of guaranteed loans. Reclamation will only offer loan guarantees to eligible projects that demonstrate, to the satisfaction of the Secretary, the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment; the ability of the borrower to repay all project financing; and pay all operations, maintenance, and replacement costs of the project facilities.

The statute explicitly defines the scope of lenders that are eligible to participate in the program. This is addressed in section 403.37 of this rule. A prospective lender must submit proof that it is eligible pursuant to the statute and meet the requirements as set out in this rule. A lender that meets the requirements and wishes to participate in the program must execute an agreement with Reclamation and thereupon will be considered an approved lender for a period of 2 years. The requirements, as set out in §§ 403.37, 403.38, and 403.39 of this rule, are intended to ensure that the lender has the appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed pursuant to the Act. It is intended that lenders, who will bear at least 20 percent of the risk of the guaranteed loan, will exercise a high level of care and diligence in the underwriting and due diligence of the loans. As described in Section 403.39, we are proposing to require that lenders provide Reclamation periodic financial reports on the status and condition of

the loan, consistent with the terms of the Lender's Agreement; to service the loan consistent with the regulation and the Lender's Agreement and notify Reclamation promptly if it becomes aware of any problems or irregularities concerning the project or the ability of the borrower to make payment on the loan. We invite you to comment on the proposed lender eligibility criteria and requirements. We are specifically interested in how the criteria and requirements would be applied should the lender fall from eligibility after the loan has been originated. Comments are also invited on the potential additional efficiency or productivity benefits that may be realized by the improvement, repair, or replacement of the infrastructure, facilities, or asset.

The Act defines the term "project" to include "an extraordinary operation and maintenance activity for, or the rehabilitation or replacement of a facility that is authorized by Federal reclamation law and constructed by the United States under such law; or in connection with which there is a repayment or water service contract executed by the United States" (Category B). The statute does not define the phrase "extraordinary operation and maintenance activity." In section 403.2, we propose to define "extraordinary operation and maintenance activity as major, non-recurring maintenance to Reclamation-owned or operated facilities, or facility components, that is intended to ensure the continued safe, dependable, and reliable delivery of authorized reclamation project benefits; and greater than 10 percent of the borrower's annual O & M budget for the facility, or greater than \$100,000.

Reclamation developed this definition during its *Managing for Excellence* efforts. The definition, developed as part of the public process associated with these efforts, was vetted both within Reclamation and with its water users, and it has been adopted in this rule. We request comment on this definition, the percentage and dollar thresholds, and the application and use of the definition within the proposed program.

Project Costs. In section 403.2, we propose to define project costs as the expected financial obligations which may be incurred for the development and support of the various features of an eligible project, as specified in § 403.50. The key elements of estimating eligible project costs are detailed in existing Reclamation policies. Section 204 of the Act provides that the Secretary shall not issue loan guarantees that exceed 90 percent of the cost of the project, as estimated at the time the loan guarantee

is issued. Also, section 403.31 of this rule provides that the United States will guarantee up to 80 percent of eligible losses on a guaranteed loan, including principal outstanding and interest accrued as of the time of default by a borrower consistent with Federal credit policies under OMB circular A-129. Section 403.50 of this rule identifies the type of project costs that will be considered eligible to be included under a loan guarantee and which costs will not be considered eligible costs.

Defaults. Consistent with section 205 of the Act, we are proposing in Subpart F the options and processes that may be available if a borrower defaults on an obligation. Section 205 of the Act provides that, if a borrower defaults on the obligation, the holder of the loan guarantee shall have the right to demand claim payment from the Secretary per the terms of the Loan Note Guarantee Agreement. Section 403.66 of this rule prescribes actions and timelines for default proceedings, reflecting requirements both for default proceedings against loans for which collateral is pledged and against those for which it is not. The timeline and proceedings are expected to be shorter where there is no collateral, since liquidation is not a factor.

Interest Rate. Section 204 of the Act provides that an obligation shall bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks. In section 403.52 of this rule, we propose to require loans to bear fixed interest at a rate or rates negotiated between the borrower and the lender. However, rates charged should be similar to rates customarily charged to borrowers in the ordinary course of business. Interest rates are subject to Secretarial review and approval to determine appropriateness. Reclamation will consult with the Department of Treasury on appropriate interest rates.

Term of Loan. A loan guaranteed under the Act must provide for complete amortization within 40 years. Section 403.48 of this rule recognizes that lenders may offer shorter terms. Reclamation will not approve a loan guarantee that exceeds the financial capability of the borrower, or for a term that exceeds the useful life of the project.

Nonsubordination and Superior Rights. Consistent with section 205 of the Act, we propose in section 403.56 of this rule that no loan guaranteed under the Act shall be subordinated to other financing. We further propose that the lender must obtain a position of parity

with regard to non-collateralized obligations of the borrower. This means that in the event of a default, all non-secured lenders bear the risk of loss on a proportionate basis. Further, the non-guaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion. Also, section 205(b)(2) of the Act states that the rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

Prepayment and refinancing. The Act allows for prepayment and refinancing of the terms of a loan guarantee subject to the consent of the Secretary. Section 403.53 of this rule recognizes that prepayment and refinancing terms of a loan may be negotiated between the non-federal borrower and the lender, subject to the Secretary's consent as part of the overall approval of the loan to be guaranteed. Any changes to such terms must also be approved by the Secretary, and to the extent such changes were not captured in the original cost estimate for the loan guarantee, such approval would be subject to the availability of appropriations, in addition to all other applicable statutory and regulatory requirements.

Full Faith and Credit. Consistent with section 211 of the Act, we propose in section 403.3 of this rule to pledge the full faith and credit of the United States to the payment of all guarantees issued, with respect to principal and interest. Section 403.3 further proposes that the full faith and credit of the United States is not contestable except in the case of fraud or misrepresentation of which the lender has actual knowledge, participates in, or condones.

Interagency coordination and cooperation. Section 209 of the Act requires the Secretary to consult with the Secretary of Agriculture prior to implementing a loan guarantee program. Reclamation has been working closely with the Department of Agriculture, and has gained valuable information on carrying out such programs. Section 209 also requires that a memorandum of agreement will be entered providing for the Department of Agriculture to carry out financial appraisal functions and loan guarantee administration activities. Both Departments are working toward development of this agreement. It is not the intent that this agreement will place any undue burdens on the implementation of the program; rather, Reclamation will be afforded the experience and help of the Department of Agriculture, which has extensive experience in issuing loan guarantees.

Termination of Authority. Section 215 of the Act provides that the Secretary's authority to issue loan guarantees terminates 10 years after the date of enactment of the Act, which will be December 2016. However, the termination of authority shall have no effect on any loans already guaranteed or on the administration of any loan guaranteed prior to the date of the termination.

Duplicative Assistance. With the exception of Rural Water projects authorized under Title I of Public Law 109-451, loan guarantees under this program cannot be paired with other Federal assistance for the same project.

II. Procedural Requirement

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

The Office of Management and Budget (OMB) has determined that this rule is a significant rule and has reviewed it under the requirements of E.O. 12866.

The loan guarantee program addressed by this rule will facilitate the financing of extraordinary maintenance and rehabilitation needs of Reclamation projects and improvements to facilities directly associated with them. Beneficiaries already have financial responsibility for these costs, but often have significant difficulty meeting these responsibilities when the expenses are of an extraordinary nature. Facilitating the financing of these extraordinary expenditures is a tool that may help to ensure the continued benefits currently being generated by Reclamation projects throughout the western United States.

In implementing this rule, we plan to use application forms very similar to those currently used by the U.S. Department of Agriculture (USDA) for its Rural Development Loan Guarantee Program (USDA Program). Review and approval for the use of these forms is taking place concurrently with the development of this rule. However, the facilities being repaired or rehabilitated with financing assistance under our proposed loan guarantee program likely will not be the same types of facilities whose construction is financed by the USDA Program. Reclamation has consulted with USDA regarding the details of USDA's related programs, and will continue to do so. These consultations will likely result in USDA providing some assistance in the administration of our programs under Titles I and II of Public Law 109-451.

2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this action will not have a significant economic effect

on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The entities eligible for loan guarantees under this program may include small entities defined in the Regulatory Flexibility Act. However, this rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule and does not mandate participation. Therefore, we have determined that the rule will not have a significant economic impact on a substantial number of small entities.

3. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMR Act) (2 U.S.C. 1531 *et seq.*) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The UMR Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect those small governments.

The term Federal mandate is defined in the UMR Act to mean a Federal intergovernmental mandate or a Federal private sector mandate. Although this rule will impose certain requirements on non-Federal governmental and private sector applicants for loan guarantees, the UMR Act's definitions of the terms "Federal intergovernmental mandate" and "Federal private sector mandate" exclude, among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively).

This rule does not impose an unfunded mandate or a requirement to expend monies on the part of State, local, or tribal governments or communities, or the private sector. Requests from any of these entities for loan guarantees under the proposed rules are strictly voluntary. Reclamation is not imposing a duty, requirement, or mandate on State, local, or tribal governments or communities, or the private sector to request such financing assistance. Thus this rule falls under the exceptions in the definitions of "Federal

intergovernmental mandate" and "Federal private sector mandate" for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. Therefore, the Act does not apply to this rulemaking and a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

4. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O. 13406, this rule does not have any significant takings implications. This rule sets forth the requirements for requesting and obtaining loan guarantees from Reclamation to assist in financing eligible projects for which Reclamation project beneficiaries are already financially responsible. While some of the project beneficiaries' property may be pledged as collateral for the loans to be guaranteed, the property would only be transferred from the owner if default occurs and such a situation would not constitute a taking. A Takings Implication Assessment is therefore not required.

5. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, 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. A Federalism Assessment is not required.

6. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system;
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

7. Consultation with Indian Tribes (E.O. 13175)

Under the criteria of E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian tribes. While many tribal entities may be eligible to apply for loan guarantees from Reclamation

under this rule, such application is strictly voluntary.

8. Paperwork Reduction Act

This rule would require applicants to provide information that will enable Reclamation to determine eligibility for the program and creditworthiness. The information will also be necessary to evaluate the merits of applications and effectively administer any guaranteed loans. The rule also proposes to require that lenders submit information to allow Reclamation to determine their eligibility for participation and to submit reports and other information related to loan guarantees and the borrower. Reclamation plans to use several forms very similar to those currently used for various USDA Programs. The purpose of the forms will be to obtain relevant financial information including income and expenses, collateral assets, previous credit history, and current loan status. Following are further details regarding the information collection:

Title: Reclamation Loan Guarantees
43 CFR Part 403.

OMB No. 1006-NEW.

Frequency: One-time voluntary application.

Respondents for loan applications and participating lenders: Eligible entities (described in § 403.4 of the rule) that desire to obtain a private loan guaranteed by Reclamation and eligible lenders (described in § 403.37) that wish to participate in the loan guarantee program.

Estimated Total Number of Respondents: 76.

Estimated Number of Responses per Respondent: 1.2.

Estimated Total Annual Burden on Respondents, including form and non-form requirements: 737 hours.

Comments are Invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

As part of our continuing effort to reduce paperwork and respondent burdens, Reclamation invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit

your comments directly to the Office of Information and Regulatory Affairs, OMB. You should provide Reclamation with a copy of your comments so that we can summarize all written comments and address them in the final rule preamble. Refer to the **ADDRESSES** section for instructions on submitting comments. You may obtain a copy of the supporting statement for this new collection of information by contacting Reclamation's Information Collection Clearance Officer at (303) 445-2055.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulation becomes effective, you are not required to respond. The OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2008. This does not affect the deadline for the public to comment to Reclamation on the proposed regulation. OMB has up to 60 days to approve the information collection in this rule, but may respond after 30 days; therefore public comment on the information collection must be received on or before November 5, 2008.

9. National Environmental Policy Act of 1969 (NEPA)

This document has been reviewed in accordance with the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR Parts 1500-1508). Reclamation has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required. Loan applications will be reviewed individually to determine compliance with NEPA.

10. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211, in that it is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. While loan guarantees will more commonly be extended to water supply facilities, any extension of the guarantees to power production facilities would have the same beneficial effects of credit assistance. No adverse effects on these facilities could result from the proposed rule. A Statement of Energy Effects is therefore not required.

12. Clarity of This Regulation

We are required by E.O. 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe we have not met these requirements, please send comments to Reclamation as instructed in the **ADDRESSES** section. Please make your comments as specific as possible, referring to specific sections and how they could be improved. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

13. Public Comments

Reclamation believes a 30 day public comment period is appropriate. The Loan Guarantee rule may provide a helpful financial tool to help accomplish Reclamation's goals. Reclamation has encouraged public participation through public meetings and has incorporated into the proposed rule public input from these meetings. The public was involved in developing the framework documents which were utilized in preparing the rule. Reclamation specifically addressed the Loan Guarantee program during public meetings held in Salt Lake City, UT on September 19 and 20, 2006 and received valuable feedback. Considering that those interested in the proposed rule are already aware of the framework and have had opportunity to provide input through these public meetings, Reclamation believes 30 days provides sufficient time to provide additional input on the proposal.

Before including your name, 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.

List of Subjects in 43 CFR Part 403

Loan guarantee, Water supply.

Dated: September 29, 2008.

Kameran L. Onley,

Acting Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 403 to Title 43 of the Code of Federal Regulations as follows:

PART 403—RECLAMATION LOAN GUARANTEES

Subpart A—Loan Guarantee Program Overview

Sec.

- 403.1 What is the purpose of the program?
- 403.2 What terms are used in this part?
- 403.3 Are loan guarantees supported by the full faith and credit of the United States?
- 403.4 Who is eligible for a loan guarantee?
- 403.5 What can I finance under the program?
- 403.6 How do I obtain a loan guarantee?
- 403.7 What must be included in an application package?
- 403.8 [Reserved]
- 403.9 What are the criteria for program eligibility?
- 403.10 How will Reclamation evaluate my application?
- 403.11 What criteria will be used to prioritize loan requests?
- 403.12-403.15 [Reserved]
- 403.16 What permits must I obtain?
- 403.17 Where can I get more information about loan guarantees?
- 403.18 Does this rule contain an information collection that requires approval by OMB?
- 403.19 [Reserved]

Subpart B—Borrower Roles and Responsibilities

- 403.20 As a borrower, what is my role in the loan guarantee program?
- 403.21 What is my role in preparation of environmental compliance documents?
- 403.22 What is my role in preparing plans and specifications for the project?
- 403.23-403.24 [Reserved]
- 403.25 What are the application and contractual requirements if I apply for a guaranteed loan as a Joint Powers Authority (JPA)?
- 403.26-403.28 [Reserved]

Subpart C—Reclamation Roles and Responsibilities

- 403.29 What is Reclamation's role in the loan guarantee program?
- 403.30 What information will Reclamation maintain on the lender?

- 403.31 How much of the loan will Reclamation guarantee?
 403.32 What is Reclamation's role in preparation of NEPA and other environmental compliance documents?
 403.33 Can Reclamation make exceptions to requirements in this rule?
 403.34–403.36 [Reserved]

Subpart D—Lender Criteria and Responsibilities

- 403.37 Which lenders are eligible to participate in the program?
 403.38 What other requirements must a lender meet to participate in the program?
 403.39 What is the lender's role in the program?
 403.40 Can the lender cancel or modify a Conditional Commitment for Guarantee, or transfer it to another lender?
 403.41 Can a lender sell or transfer the Loan Note Guarantee Agreement to another lender?
 403.42 Can a lender sell the debt obligation in a secondary market?
 403.43 What fees and costs is the lender responsible for?
 403.44 Can Reclamation guarantee bonds sold to finance eligible projects?
 403.45–403.46 [Reserved]

Subpart E—Guaranteed Loan Terms and Details

- 403.47 What conditions must be met before a Loan Note Guarantee Agreement is issued?
 403.48 What is the maximum term I can obtain on a guaranteed loan?
 403.49 Is there a limit on the size of a guaranteed loan?
 403.50 What project costs are eligible to be covered by my guaranteed loan?
 403.51 What if my project cost exceeds the estimated loan guarantee amount?
 403.52 What interest rates and charges apply to my guaranteed loan?
 403.53 Can I prepay or refinance a guaranteed loan?
 403.54 When can an entity begin actual "on the ground" work on the project to be financed?
 403.55 [Reserved]
 403.56 Can the repayment of a loan guarantee be subordinated to any other financing?
 403.57 Under what conditions would the United States not pay the guaranteed portion of a loan?
 403.58 Will the requirements of the Reclamation Reform Act of 1982 apply?
 403.59–403.62 [Reserved]

Subpart F—Default Actions and Termination

- 403.63 What options do I have if I have problems repaying the guaranteed loan?
 403.64 How can Reclamation help me if I can't resolve repayment problems with my lender?
 403.65 What happens if I still can't make my payments after working with the lender and Reclamation?
 403.66 What are the actions and timelines associated with default proceedings?
 403.67 What is the process for liquidation where collateral has been pledged?

- 403.68 What is the timeline for filing a Final Report of Loss?
 403.69 [Reserved]
 403.70 What interest does the lender have in the guaranteed loan after Reclamation makes a loss payment?
 403.71 What will Reclamation do if a borrower defaults?
 403.72 When does the Loan Note Guarantee Agreement terminate?
 403.73 What happens if the non-Federal party breaches the existing Loan Note Guarantee Agreement?

Authority: Pub. L. 109–451, 120 Stat. 3345 (43 U.S.C. 2401 *et seq.*).

Subpart A—Loan Guarantee Program Overview

§ 403.1 What is the purpose of the program?

(a) The purpose of the loan guarantee program is to provide Federal assistance to eligible non-Federal borrowers for eligible projects defined as follows:

- (1) A rural water supply project;
- (2) An extraordinary operation and maintenance (O&M) activity for, or the rehabilitation or replacement of, a facility—

(i) That is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) In connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(3) An improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—

- (i) Improves water management; and
- (ii) Fulfills other Federal goals.

(b) The program does not include loans for routine O&M work.

§ 403.2 What terms are used in this part?

The following definitions apply for terms used in this part:

Applicant means a non-Federal entity meeting the criteria in § 403.4 that seeks to obtain a Reclamation-guaranteed loan for a project meeting the criteria in § 403.5. The applicant is often referred to as "you" in this part.

Borrower means an Applicant who has entered into a Loan Note Guarantee Agreement with an eligible lender and Reclamation.

Collateral means non-Federal property of value pledged as security for satisfaction of the debt.

Conditional Commitment for Guarantee means a document issued by Reclamation and accepted by the Applicant and the lender, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual,

statutory and regulatory requirements, or other requirements specified in the document, DOI, the Applicant, and the lender may execute a Loan Note Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for Guarantee for any reason at any time prior to the execution of the Loan Note Guarantee Agreement. The Conditional Commitment is non-binding. Reclamation will only offer Conditional Commitments for Guarantee to the extent appropriations are available to support the loan guarantee.

Extraordinary operation and maintenance means major, non-recurring maintenance to Reclamation-owned or operated facilities, or facility components, that is:

(1) Intended to ensure the continued safe, dependable, and reliable delivery of authorized Reclamation project benefits; and

(2) Greater than 10 percent of the borrower's annual O&M budget for the facility, or greater than \$100,000.

Financial capability to repay loan means the borrower's ability to repay the loan as determined by the Secretary. Factors determining a borrower's financial capability may include, but are not limited to: Expenses as a ratio to income, amount of current debts/liabilities, projected revenues, including user fees or other dedicated revenue sources available to repay the guaranteed loan, the ability of Reclamation project beneficiaries to meet all operations, maintenance, and rehabilitation costs of the subject facilities and previous record of repaying obligations.

Improvement to Water Infrastructure means a valuable addition made to property, or an enhancement of its condition, including modernization, upgrades or other enhancements meant to conserve water, increase water use efficiency, or enhance water management, and does not include routine maintenance.

Joint Financing means a situation where two or more lenders (or any combination of lenders and other non-Federal financial sources) make separate, relatively contemporaneous loans or grants to supply the funds required by one borrower.

Joint Powers Authority (JPA) means a regional agency that:

(1) Represents two or more local entities (e.g., Reclamation repayment or water service contractors); and

(2) Exercises common powers as authorized by the State in which the local entities operate (some States may refer to such regional agencies by another name).

Lender means a non-Federal lending institution meeting the criteria in § 403.40 that has an agreement with Reclamation to participate in the loan guarantee program. The lender requests a loan guarantee from Reclamation and then works directly with the borrower to originate and service the loan.

Lender's Agreement means the signed agreement between Reclamation and the lender providing proof of the lender's eligibility to participate in the loan guarantee program, and containing the lender's responsibilities as defined in subpart D of this part. The Lender's Agreement is a single document that is valid for two years, as indicated in § 403.38. Only one Lender's Agreement will be required for each eligible lender.

Loan Guarantee means any guarantee, insurance, or other pledge by Reclamation to pay all or part of the principal of and interest on a loan or other debt obligation of a non-Federal borrower to a lender.

Loan Guarantee Closing Report means the Reclamation form prepared at the time a Loan Note Guarantee Agreement is issued and upon payment of guaranteed loan fees, or when the terms or conditions of the loan guarantee change, such as the assumption or assignment of guaranteed loans. This form must accompany all loan guarantee fee payments. The lender delivers this form and applicable fee to Reclamation.

Loan Note Guarantee Agreement means a written agreement that, when entered into by Reclamation, a borrower, and an eligible lender, pursuant to the Act, establishes the obligation of Reclamation to guarantee the payment of all or a portion of the principal and interest on specified guaranteed obligations of a borrower to eligible lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

Project means:

(1) A rural water supply project (as defined in section 102(9) of Title I of Public Law 109-451);

(2) An extraordinary operation and maintenance activity for, or the rehabilitation or replacement of, a facility—

(i) That is authorized by Federal reclamation law and constructed by the United States under such law; or

(ii) In connection with which there is a repayment or water service contract executed by the United States under Federal reclamation law; or

(3) An improvement to water infrastructure directly associated with a reclamation project that, based on a determination of the Secretary—

- (i) Improves water management; and
- (ii) Fulfills other Federal goals.

Project Costs means the expected financial obligations which may be incurred for the development and support of the various features of an eligible project, as specified in § 403.50. The key elements of estimating eligible project costs are detailed in existing Reclamation policy. Project costs do not include costs for the items set forth in § 403.50(b).

Reclamation means the Bureau of Reclamation, also referred to in this part as "us" and "we."

Reclamation Project means a geographically-defined system of structures specifically authorized by Congress, such as the Central Arizona Project or the Central Valley Project.

Rehabilitation and Replacement means the processes of renovating a facility or system where performance is failing to meet the original criteria and needs of the Reclamation Project. This process is generally significant in terms of magnitude of work involved and related costs and, thus, also may benefit from the use of the loan guarantee program. Replacements are typically related to items with a defined service life. Examples of this could include the replacement of a dam gate or valve that has met or exceeded its expected service life, replacements of a reach of canal lining, or other work beyond the capability of the borrower to finance from annual O&M budgets or reserve funds.

Report of Loss means the Reclamation form used by lenders when reporting a loss on a Reclamation guaranteed loan.

Reserved Works means facilities owned, operated, and maintained by Reclamation, O&M costs of which may be paid in part by authorized Reclamation Project entities.

Routine Operation and Maintenance means recurring operation and maintenance activities such as minor repairs and replacement of parts and structural components, and other day-to-day activities needed to preserve a facility so that it continues to provide acceptable services and achieves its expected life. It excludes extraordinary operation and maintenance, rehabilitation, and replacement.

Transferred Works means facilities for which the management, funding (full or partial), and operation and maintenance has been transferred to one or more of the Reclamation Project beneficiaries. Reclamation still maintains ownership of the facilities.

§ 403.3 Are loan guarantees supported by the full faith and credit of the United States?

Yes. The full faith and credit of the United States is pledged to the payment of all guarantees issued under this

regulation with respect to principal and interest. Issuance of a Loan Note Guarantee Agreement constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation of which the lender has actual knowledge, participates in, or condones. Some exceptions may apply in cases where the lender does not perform reasonable and customary servicing of the loan, as described in § 403.60.

§ 403.4 Who is eligible for a loan guarantee?

To be eligible for a loan guarantee under this part, an entity must be either:

(a) A State (including department, agency, or political subdivision of a State); or

(b) A conservancy district, irrigation district, canal company, water users association, Indian tribe, an agency created by interstate compact or any other entity that has the capacity to contract with the United States under Federal reclamation law (e.g., a rural water association or a JPA).

§ 403.5 What can I finance under the program?

You can finance project costs as described in § 403.50(a) for any of the types of work listed in paragraphs (a), (b), or (c) of this section.

(a) Construction of projects determined to be eligible under Title I of Public Law 109-451, The Rural Water Supply Act of 2006.

(b) Extraordinary operation and maintenance for, or the rehabilitation or replacement of, a facility that:

(1) Is authorized by Federal reclamation law and constructed by the United States under that law; or

(2) Has in place a repayment or water service contract under Federal reclamation law. In addition to facilities where Reclamation holds title, this would include facilities constructed and operated by the U.S. Army Corps of Engineers, where irrigation water users contract with Reclamation for use of the water from the facilities and pay some portion of the O&M costs associated with those facilities.

(c) Improvements to water infrastructure directly associated with a Reclamation project. If you have existing facilities that are physically connected to or receive water directly from a Reclamation project, improvements to those facilities may qualify for financing under the program. Decisions on which facilities qualify under this section will be made on a case-by-case basis.

§ 403.6 How do I obtain a loan guarantee?

(a) After receiving appropriations for the loan guarantee program, we will issue solicitations to invite the submission of Applications for loan guarantees for eligible projects. We will issue a solicitation before proceeding with other steps in the loan guarantee process, including issuance of a loan guarantee. Each solicitation may include programmatic, technical, financial and other factors we will use to evaluate applications and such other information as we may deem appropriate.

(b) To obtain a loan guarantee under this rule, a proposed project must meet the eligibility criteria described in § 403.5 as well as any other criteria that may be identified in the solicitation.

(c) We recommend that you visit several qualified lenders to discuss the planned work, qualifications for a guaranteed loan, conditions or terms of a loan, etc. See § 403.37 for descriptions of eligible lending institutions. Once you determine which lending institution to use, you will work directly with the lender to secure its approval of your loan request based on its own financial analysis.

(d) Following a lender's approval of your loan request, you and the lender must prepare an application package to submit to us, as detailed in § 403.7, to request consideration for a loan guarantee. You and the lender may meet with us at this point in the process to discuss the requirements of the application package.

(e) When we receive your application, we will review it based on the criteria in § 403.10, and notify you and the lender whether we require additional information or the application has been denied. After completion of our review and evaluation, Reclamation may offer a conditional commitment for guarantee.

(f) You and the lender complete and sign the Acceptance of Conditions and return a copy to us. You will then continue to work with the lender to meet the conditions set forth in the Conditional Commitment for Guarantee.

(g) Once terms and conditions of the Conditional Commitment (such as NEPA compliance; necessary local, State, tribal, or Federal permits; and district election to approve indebtedness, if applicable), and any other applicable statutory, regulatory, and budgetary requirements are met, and the Secretary determines that the loan merits a guarantee, Reclamation, you, and the lender will sign the Loan Note Guarantee Agreement.

§ 403.7 What must be included in an application package?

An application package must contain the following:

(a) Application for Loan Guarantee on Form 7-2580;

(b) Proposed loan agreement between you and the lender;

(c) A report containing an analysis of the potential environmental impacts of the project. The report should be pursuant to the National Environmental Policy Act and in accordance with appropriate Reclamation standards.

(d) Preliminary architectural and/or engineering report, including financial feasibility analysis (as appropriate);

(e) Project cost estimates as described in § 403.50;

(f) Appraisal reports for real property serving as collateral, consistent with the Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Standards Board of the Appraisal Foundation and conducted by a state licensed or certified appraiser;

(g) Credit reports;

(h) Pro-forma cashflows;

(i) A loan schedule and documentation outlining the terms and conditions of the loan to be guaranteed;

(j) The lender's credit analysis which shall include an analysis demonstrating that at the time of the application, there is reasonable prospect that the Borrower will be able to repay the guaranteed obligation (including interest) from user fees or other dedicated revenue sources, as well as an analysis demonstrating that the borrower has the ability to pay all operation, maintenance, and rehabilitation costs of the project facilities;

(k) A full description of all security features (such as any project or non-project assets pledged as collateral to the obligation) that would ensure repayment;

(l) Proposed timeline for work accomplishment; and

(m) Any additional information required, as determined by Reclamation, including other information relied upon by the lender in approving the borrower's initial loan request.

§ 403.8 [Reserved]**§ 403.9 What are the criteria for program eligibility?**

Section 403.4 defines who is eligible for a loan guarantee. In addition to meeting the entity eligibility criteria, a proposal must:

(a) Meet acceptable engineering, financial, public health, and environmental standards;

(b) Be for extraordinary repair, rehabilitation, replacement or

betterment to facilities owned by Reclamation, or for facilities which are associated with a repayment or water service contract executed by the United States under Federal Reclamation law;

(c) Be for improvements to water infrastructure directly associated with a Reclamation project;

(d) Be prepared or reviewed by a certified professional engineer;

(e) Have been reviewed by a financial institution for financial feasibility, and a letter of intent regarding the issuance of sufficient loan financing accompanies the proposal;

(f) Be accompanied by appropriate documentation prepared pursuant to the National Environmental Policy Act and in accordance with appropriate Reclamation standards;

(g) Demonstrate approval, as appropriate, of any party necessary for the borrower to enter into a Loan Note Guarantee Agreement;

(h) Demonstrate to the satisfaction of the Secretary the creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features to ensure repayment;

(i) Demonstrate to the satisfaction of the Secretary that the borrower has the ability to repay the project financing from user fees or other dedicated revenue sources;

(j) Demonstrate to the satisfaction of the Secretary that the borrower has the ability to pay all operation, maintenance, and rehabilitation costs of the project facilities;

(k) Describe the borrower's efforts to obtain alternative financing for the proposed project;

(l) Demonstrate that the borrower's proposed activities will be well managed, have clear deliverables, will be accomplished on schedule and within budget; and

(m) Describe how these planned activities will ensure the continued safe, dependable, and reliable delivery of authorized project benefits.

§ 403.10 How will Reclamation evaluate my application?

(a) In addition to the amount of funds available to use for loan guarantees, we will consider many different factors in evaluating your loan guarantee application and in determining whether to issue a Conditional Commitment for Guarantee and ultimately a Loan Note Guarantee Agreement. For projects described in §§ 403.5(b) and 403.5(c), the factors include, but are not limited to, the information provided pursuant to § 403.7 above, as well as:

(1) Engineering need;

(2) Your historical diligence and effectiveness in performance of O&M,

and demonstration of financial capability to meet routine O&M expenditures;

(3) Efficiency opportunities;
 (4) Environmental effects/impacts;
 (5) Range of alternatives considered (including a comparison of major rehabilitation or repair versus replacement of the affected facilities, if replacement is an appropriate alternative)); and

(6) Your financial capability to repay the guaranteed loan, assessed on the basis of:

(i) Outstanding debts and all other financial obligations;
 (ii) Amount of loan, rates, and terms;
 (iii) Past performance in repaying loans or other debts;
 (iv) Collateral/equity as appropriate;
 (v) Financial backing or support from local, State, or other non-Federal entities; and

(vi) Availability of reliable revenue sources, such as user fees and ad valorem taxes.

(b) While we do not expect to do so, we may waive certain criteria consistent with Title II of Public Law 109-451 section 203(b) that we determine to be duplicative or rendered unnecessary because of an action already taken by the United States.

(c) For projects described in § 403.5(a), a determination of eligibility under Title I of Public Law 109-451 will establish eligibility for participation in the loan guarantee program. Additional eligibility criteria and program requirements for such projects will be published in the future as supplements to this part.

(d) As a part of our evaluation of your loan application, we will use any additional information that we deem appropriate to verify the data included in your loan guarantee application in order to:

(1) Determine the eligibility of a project;
 (2) Establish a priority ranking of all eligible projects; and
 (3) Determine which projects we will offer a Conditional Commitment for Guarantee.

(e) If your application fails to meet the requirements of paragraph (a) of this section, we will notify you of the criteria we deem to be deficient and may take one or more of the following actions:

(1) Request additional information to correct identified deficiencies;
 (2) Request one or more meetings with you to address deficiencies;
 (3) Return the application and request that you address identified deficiencies; or
 (4) Eliminate your application from further review.

(f) You may modify your application to correct deficiencies identified in paragraph (e) of this section and, in the case of paragraph (e)(3) of this section, resubmit your application to us for re-evaluation if allowed under the terms of the solicitation. We will not complete our evaluation of an application until all identified deficiencies are resolved and resubmission of the application does not impose any obligation or requirement for us to offer a Conditional Commitment for Guarantee or a Loan Note Guarantee Agreement.

(g) Any form of response or communication from us, or lack thereof, regarding your loan guarantee application shall not impose any obligation on us to issue a Conditional Commitment for Guarantee.

§ 403.11 What criteria will be used to prioritize loan requests?

Applicants will be evaluated against other applicants and greater weight will be given to applicants with the greatest engineering need. After meeting the program eligibility criteria provided in § 403.9, loan guarantee proposals will be prioritized based on the following criteria. Applicants will be evaluated against other applicants and greater weight will be given to applicants with the greatest engineering need and any other factors that may be identified in the solicitation, including those noted below.

(a) Engineering Need. (1) For category (B) and (C) projects, a major factor in prioritization of eligible applicants will be the extent to which engineering analysis demonstrates that the facilities face existing or potential conditions that would severely impair their performance (e.g., significant reduction of service delivery or reliability). The analysis can be provided by the applicant, a consultant to the applicant, or by Reclamation, in the case of facilities operated and maintained by Reclamation for which the applicant is required to share in the O&M costs. The analysis should cite:

(i) The time frame over which the impairment could reasonably be expected;
 (ii) The consequences of impairment; and
 (iii) Risk factors that could be mitigated if the project is undertaken.

(2) For Category (B) projects, proposals should cite findings from Reclamation's Review of Operation and Maintenance (RO&M) Program and Facility Review reports as support for the maintenance or rehabilitation need.

(b) History of Operations and Maintenance. For Category (B) projects, the proposal will document the history

of O&M activities by the applicant, supported by Reclamation's RO&M and Facility Review reports. An evaluation will be made as to the applicant's diligence in operating and maintaining the assets entrusted to them by Reclamation. For all other projects with existing history, evaluation will be made based on information provided in the application and any other available information sources.

(c) Efficiency Opportunities. Engineering analysis demonstrates that there is a significant opportunity to substantially reduce future routine O&M costs associated with the facility and/or conserve or more efficiently manage the water that would be otherwise lost to seepage, evaporation, or other factors which directly result from facility deterioration due to age or use. The expected amount of O&M cost reduction or water saved will be one of the prioritization considerations.

(d) Financial Strength/Need/Feasibility. The overall financial strength of the proposed project, including the borrower's capacity to repay the loan and meet all other obligations (beyond demonstration to the satisfaction of the Secretary of the capacity to repay the loan and other financial eligibility requirements) will be considered in the prioritization as well. The proposal will also demonstrate the portion of the work to be funded by private sources, as well as any contribution expected from any non-Federal governmental agency. The proposal must demonstrate that it is infeasible for the applicant to finance the project using its current resources (e.g., reserve funds, tax base, etc.).

(e) Environmental Effects. The potential for the proposed project to further reduce existing negative environmental effects or to provide environmental benefits.

(f) Alternatives Considered. The proposal will document alternatives to the anticipated proposed work, including the "no action" alternative, the estimated costs for such alternatives, and reasons those alternatives were not selected. The extent to which all viable alternatives have been considered will also be taken into account in the prioritization process.

(g) Best Management Practices. The proposal demonstrates that the borrower's proposed activities have clear deliverables, can reasonably be expected to be accomplished on schedule, within budget, and have tangible performance targets.

§§ 403.12–403.15 [Reserved]**§ 403.16 What permits must I obtain?**

Environmental compliance processes and other permits are required by law, and your project schedule and budget must account for this activity. You should consult with your local Reclamation office regarding details on the environmental compliance and permitting process. The following provides examples of permits and approvals often required:

(a) Federal—NEPA, Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act compliance, and Clean Water Act permits (401, 402, 404 permits);

(b) State—rights-of-way, water use, mineral use permits, and State environmental compliance;

(c) Tribal—rights-of-way, water use, cultural resources, mineral use permits, etc.; and

(d) Local/private—rights-of-way, water use, mineral use permits, and road use permits.

§ 403.17 Where can I get more information about loan guarantees?

You may contact your nearest Reclamation office for more information or assistance. Contact information may be found at <http://www.usbr.gov>.

§ 403.18 Does this rule contain an information collection that requires approval by OMB?

Yes. It does contain an information collection that is approved by OMB, under Control Number 1006-XXXX. 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.

403.19 [Reserved]**Subpart B—Borrower Roles and Responsibilities****§ 403.20 As a borrower, what is my role in the loan guarantee program?**

As the borrower, you are the initiator of the loan guarantee process. You must do all of the following:

(a) Apply for participation in the loan guarantee program;

(b) Work with the lender for approval and conditions/terms of the loan;

(c) Work with both the lender and us throughout the process and life of the loan;

(d) Be financially responsible to repay the money borrowed under this program;

(e) Be responsible for obtaining all necessary approvals, permits, or other conditions necessary for the project, and

ensuring all contractual and other requirements related to the project, the facility, and the loan guarantee are met; and

(f) Be responsible for ensuring all required documents are completed and submitted as required in order to complete your project.

§ 403.21 What is my role in preparation of environmental compliance documents?

(a) NEPA and other documents may be prepared by Reclamation, by you, or by a consultant employed by you and approved by Reclamation. You will work with your local Reclamation office to decide who will prepare these documents. Regardless of who prepares the NEPA documents, we must independently evaluate them for sufficiency before final approval. We will work closely with you and any consultant involved.

(b) If the NEPA document is an Environmental Impact Statement, Reclamation must select, alone or in cooperation with you, any NEPA contractor before they begin work on the document.

(c) We will allocate all costs associated with NEPA and other forms of required environmental compliance among the authorized purposes benefiting from the project for which the loan guarantee is being sought, and you will be responsible for your allocated share of those costs.

§ 403.22 What is my role in preparing plans and specifications for the project?

If your project meets the descriptions in §§ 403.5(b) and 403.5(c), you may request that we prepare the plans and specifications, you may hire a consultant to prepare them, or you may prepare them yourself. Regardless of who prepares the documents, we must review and approve them. Reclamation must be consulted on any subsequent changes to determine if further approval is required. You must pay us for all appropriate allocated costs incurred in this review and approval. If you ask us to prepare these documents, you must also pay our costs for the preparation.

§§ 403.23–403.24 [Reserved]**§ 403.25 What are the application and contractual requirements if I apply for a guaranteed loan as a Joint Powers Authority (JPA)?**

If you are a JPA, you must meet all of the requirements of this section.

(a) Your application must:

(1) Identify each of the participating local water entities responsible to your JPA for revenues to repay the guaranteed loan;

(2) Identify each participating entity's authority to act on behalf of its water

users or other constituents relative to the proposed obligation; and

(3) Identify the authorities through which the participating entities will assess and collect revenues necessary to repay through the JPA its share of the proposed loan obligation.

(b) You must supply required financial information for each local entity.

(c) You must determine the allocation of the loan obligation among the various entities of your JPA.

(d) The participating entities must formally acknowledge their respective portions of the loan obligation and must sign all applicable loan agreements.

§§ 403.26–403.28 [Reserved]**Subpart C—Reclamation Roles and Responsibilities****§ 403.29 What is Reclamation's role in the loan guarantee program?**

Reclamation has general oversight and administers the loan guarantee program. In these capacities we:

(a) Issue solicitations for loan guarantee applications, as described in § 403.6(a);

(b) Work with you and the lender when you submit your request for a loan guarantee;

(c) Review all applications received and determine who will receive loan guarantees and for how much;

(d) Ensure appropriate completion of the project in accordance with plans and specifications; and

(e) Manage and ensure proper oversight of the overall loan guarantee program.

§ 403.30 What information will Reclamation maintain on the lender?

We will maintain an operational file on each lender. This file will contain, among other things:

(a) Information on the guaranteed loans originated and serviced by the lender;

(b) Any correspondence between us and the lender;

(c) Any Conditional Commitments for Guarantee;

(d) The Lender's Agreement;

(e) Any Loan Note Guarantee Agreements issued to the lender; and

(f) Any Loan Guarantee Closing Report prepared for each loan.

§ 403.31 How much of the loan will Reclamation guarantee?

We will guarantee up to 80 percent of the principal and up to 90 days accrued interest from the first missed payment for eligible losses, as set forth in Subpart F and in the Lender's Agreement. This guarantee is backed by the full faith and

credit of the United States, provided the lender does not demonstrate negligence in loan origination and servicing.

§ 403.32 What is Reclamation's role in preparation of NEPA and other environmental compliance documents?

We will determine the appropriate level of NEPA documentation for each project. The NEPA documentation may be prepared by Reclamation, by you, or by a consultant employed by you and approved by us. We will work with you to decide who can best prepare the documentation. Regardless of who prepares the NEPA documents, we must independently evaluate them for sufficiency before final approval.

§ 403.33 Can Reclamation make exceptions to requirements in this rule?

Yes. The Secretary may waive any of the eligibility criteria that he/she determines to be duplicative or rendered unnecessary because of an action already taken by the United States. Waivers will only be considered to the extent that the criteria have been demonstrated to be satisfied.

§§ 403.34–403.36 [Reserved]

Subpart D—Lender Criteria and Responsibilities

§ 403.37 Which lenders are eligible to participate in the program?

- (a) An eligible lender is:
- (1) Any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a), or any successor regulation, known as Rule 144A(a) of the Securities and Exchange Commission); or
 - (2) Any clean renewable energy bond lender (as defined in section 54(j)(2) of the Internal Revenue Code of 1986 (as in effect on the date of enactment of Public Law 109–451)).
- (b) [Reserved]

§ 403.38 What other requirements must a lender meet to participate in the program?

A lender wishing to participate in the loan guarantee program must submit proof to us that they are an eligible lender under § 403.37 and that they meet the requirements of this section prior to submitting an application package as described in § 403.7. Once a lender has executed a Lender's Agreement with us, they will be considered an approved lender for a period of two years provided that there is no adverse event that would affect the status of the lender, such as those listed in § 403.39(c), and need not resubmit proof of eligibility for each subsequent guaranteed loan application. At the end of this two-year period or upon information that the lender may no

longer meet current eligibility criteria, we will re-evaluate the lender's eligibility under the program.

(a) If the lender has losses or deficiencies in processing and servicing any federally guaranteed loans, they must not be above a level that indicates an inability to properly process and service a loan guaranteed by Reclamation. We may consult with other Federal agencies to determine if previous problems, as evidenced in monitoring reports, excessive loss claims, or denial of loss claims, should be considered in this determination.

(b) The lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency listed below. Examination will normally include a review of the lender's asset quality, management practices, financial condition, and compliance with applicable laws and regulations. Regulating agencies may include:

- (1) Federal Deposit Insurance Corporation (FDIC);
- (2) Office of Comptroller of the Currency;
- (3) Office of Thrift Supervision;
- (4) Federal Reserve Bank;
- (5) Farm Credit Administration (FCA);
- (6) National Credit Union Administration; and
- (7) State banking Commissions.

(c) The lender and its principal officers and staff must demonstrate capability to fulfill guaranteed loan servicing responsibilities.

(d) If the lender is regulated only by a State regulatory agency, and not a Federal regulatory agency, then it must also meet the following financial and capital requirements:

- (1) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 2 percent of loans outstanding and historic losses not exceeding 1 percent of dollars loaned;
- (2) Have tangible balance sheet equity of at least eight percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender; and
- (3) The lender, its officers, or agents must not be debarred or suspended from participation in government contracts or programs and must not be delinquent on a Federal Government debt.

§ 403.39 What is the lender's role in the program?

The lender must evaluate and administer the guaranteed loans as required by paragraph (a) of this section

and notify us of changes in status, as required by paragraph (b) of this section.

(a) The lender is responsible for all of the following:

(1) Determining whether the loan guarantee applicants meet the general eligibility requirements for a loan guarantee, from its perspective;

(2) Performing underwriting, due diligence, and evaluating the creditworthiness of the project consistent with the lender's standard lending policies and considering all relevant information;

(3) Determining if the proposed borrower is delinquent on any debt (if the borrower is delinquent on any debt, processing of the application may continue only with our written approval);

(4) Disclosing to Reclamation any business or ownership relationships between principals of the lender and borrower where the lender's officers, stockholders, directors, or partners, or the borrower, its officers, stockholders, directors, or partners own, or have management responsibilities in each other (this does not necessarily preclude such relationships);

(5) Originating and servicing all Reclamation guaranteed loans in its portfolio in accordance with the Lender's Agreement, including all of the requirements of paragraph (b) of this section;

(6) Assessing late charges of any kind including default charges and default interest in accordance with the terms and conditions approved by Reclamation under the Loan Note Guarantee Agreement (**Note:** None of these will be covered by the guarantee);

(7) Notifying us of any actions taken to cure a guaranteed loan experiencing repayment difficulties as discussed in § 403.63;

(8) Allowing us to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and Reclamation agree upon;

(9) Obtaining written approval from us before making any new loans to, or additional expenditures on behalf of, the borrower, which approval is subject to our discretion;

(10) Protecting the guaranteed loan debt and any collateral securing it in bankruptcy proceedings;

(11) Advising Reclamation promptly and in writing of any changes or conditions of the loan that may result in delinquency, inability to pay, or default by the borrower; and

(12) Advising Reclamation promptly and in writing of any financial problems

or circumstances that the non-Federal entity may have that would cause them to be delinquent in repayment of an existing obligation.

(b) For purposes of paragraph (a) (4) of this section, originating and servicing guaranteed loans includes all of the following:

(1) Servicing the entire loan in accordance with the Lender's Agreement. The un-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan;

(2) Taking all servicing actions that a prudent lender would perform in servicing a portfolio of loans that are not guaranteed, including, but not limited to, collecting payments, obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements, verifying the payment of taxes and insurance premiums as appropriate, maintaining necessary liens on any collateral, and notifying Reclamation of any violation of the loan agreement with the borrower within 30 days of such violation;

(3) Obtaining financial statements required by the Lender's Agreement, analyzing these statements, and providing the statements, along with the lender's analysis of the financial conditions of the borrower and supporting documentation, to us within 120 days of the end of the borrowers fiscal year;

(4) When applicable, requiring audits of the borrower in accordance with Office of Management and Budget circulars, available from the Reclamation contacts listed in § 403.17;

(5) Reporting monthly data on a quarterly basis to Reclamation the outstanding principal and interest balance on each guaranteed loan in its portfolio, and other information as specified in the Lender's Agreement; and

(6) Servicing delinquent loans in accordance with the Lender's Agreement and reasonable and prudent lending standards, to include monthly reporting to us on the status of delinquent loans; and

(7) Inspecting any collateral as often as necessary to ensure the proper maintenance of its value.

(c) The lender must immediately notify us in writing if it:

(1) Becomes insolvent;

(2) Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(3) Has taken any action to cease operations, or to discontinue servicing its portfolio guaranteed by Reclamation;

(4) Intends to sell the guaranteed loan to another entity;

(5) Changes its name, location, address, tax identification number, or corporate structure;

(6) Is or has been debarred, suspended, or sanctioned in connection with its participation in any Federal loan guarantee program; or is or has been debarred, suspended, or sanctioned by any Federal or State licensing or certification authority.

§ 403.40 Can the lender cancel or modify a Conditional Commitment for Guarantee, or transfer it to another lender?

(a) Once the Conditional Commitment for Guarantee is issued and accepted, no modifications may be made as to the scope and overall concept of the project or the project purpose, use of the proceeds, or other significant terms and conditions.

(b) Before issuance of the Loan Note Guarantee Agreement, Reclamation may approve the transfer of the Conditional Commitment for Guarantee to a new eligible lender, provided that:

(1) The former lender states in writing why it does not wish to continue to be the lender for the project;

(2) No substantive changes in ownership or control of the borrower have occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project have occurred;

(4) No substantive changes in the loan agreement with the borrower or the Conditional Commitment for Guarantee are required;

(5) The new lender is acceptable to Reclamation, and has a current Lender's Agreement, or will have a Lender's Agreement in place prior to the sale; and

(6) Such a transfer meets all other statutory, regulatory, and other requirements.

§ 403.41 Can a lender sell or transfer the Loan Note Guarantee Agreement to another lender?

A lender can sell or transfer a guaranteed loan to another lender if all of the requirements of this section are met.

(a) We must approve the sale or transfer in writing by executing a modification of the guarantee to identify the new lender and the amount of debt at the time of the substitution. Any change must meet all applicable statutory, regulatory, and budgetary requirements for approval.

(b) The new lender must agree in writing to:

(1) Assume all servicing and other responsibilities of the original lender and to acquire both the guaranteed and non-guaranteed portions of the loan;

(2) Execute a Lender's Agreement if one is not in effect; and

(3) Give the borrower written notice of the substitution.

(c) The original lender must obtain written concurrence from the borrower if the rate or terms are changed (and such changes have been approved).

(d) The original lender must assign its promissory note, lien instruments, loan agreements, and other documents to the new lender.

§ 403.42 Can a lender sell the debt obligation in a secondary market?

A lender can sell the debt obligation in a secondary market (for example, as a participation). However, the lender must:

(a) Notify us of the sale, and the associated holder information;

(b) Sell both the guaranteed and the non-guaranteed portions of the loan together proportionally; and

(c) Continue to service the loan.

§ 403.43 What fees and costs is the lender responsible for?

The lender is responsible for:

(a) Paying a loan guarantee fee of 1 percent to Reclamation; and

(b) At least 20 percent of the outstanding loan amount, if the borrower defaults on the loan.

(c) The lender's own costs associated with the loan guarantee program, including underwriting, servicing, and liquidation of a loan, including any legal or other costs.

§ 403.44 Can Reclamation guarantee bonds sold to finance eligible projects?

No. Reclamation cannot guarantee bonds. Bond issuers do not qualify as eligible lenders under § 403.37.

§§ 403.45–403.46 [Reserved]

Subpart E—Guaranteed Loan Terms and Details

§ 403.47 What conditions must be met before a Loan Note Guarantee Agreement is issued?

The Loan Note Guarantee Agreement may be issued only after the following have occurred:

(a) All terms of the Conditional Commitment for Guarantee have been met, to the satisfaction of Reclamation;

(b) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved by Reclamation in writing;

(c) The lender certifies that there have been no substantive adverse changes in the borrower's financial condition or any other adverse change in the borrower during the period of time from the issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee Agreement;

(d) Land access and all necessary permits are obtained;

(e) Environmental compliance has been completed and approved by Reclamation;

(f) Federal funds are available;

(g) Reclamation has approved final plans and specifications;

(h) All applicable security, safety, and health issues are resolved;

(i) The lender has executed the Lender's Agreement with us, paid the appropriate guarantee fee, and a Loan Guarantee Closing Report has been completed;

(j) All other applicable statutory, regulatory, and budgetary requirements have been met;

(k) Reclamation, in consultation with other Federal agencies determines that the project is consistent with all applicable Federal and United States Treasury policies and is in the best interest of the Federal government; and

(l) The Secretary has approved the loan for a Loan Note Guarantee Agreement.

§ 403.48 What is the maximum term I can obtain on a guaranteed loan?

A loan guarantee must provide for complete amortization of the loan within the useful life of the project, but not more than 40 years. Lenders may offer shorter terms.

§ 403.49 Is there a limit on the size of a guaranteed loan?

Public Law 109-451 limits the size of the loan to 90 percent of eligible project costs. Reclamation would only guarantee up to 80% of that total loan amount.

§ 403.50 What project costs are eligible to be covered by my guaranteed loan?

Before issuing a Loan Note Guarantee Agreement, we will determine the adequacy and appropriateness of estimated Project Costs for the project that is the subject of the agreement. In order for us to make that determination, the application must include an estimate of project costs that complies with applicable Reclamation policy. Among other things, you must calculate the sum of necessary, reasonable and customary costs that you have paid and expect to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs. All

estimated costs must be clearly described and documented in your application for a loan guarantee.

(a) Project Costs may include, but are not limited to:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with rehabilitating or replacing the facility; including materials, labor, services, travel and transportation for facility design, construction, and startup;

(3) Costs of equipment purchases;

(4) Costs to provide equipment, facilities, and services related to safety and environmental protection;

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) Costs of necessary and appropriate insurance and bonds of all types;

(7) Contract costs and non-contract costs, including appropriate contingencies, allowances for procurement strategies, and cost escalation estimates;

(8) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and

(9) Other necessary and reasonable costs.

(b) Project Costs do not include:

(1) Fees and commissions charged to borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project-related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Costs that are excessive or are not directly required to carry out the project, as determined by us, including but not limited to the cost of hedging instruments; and

(4) Operating costs.

§ 403.51 What if my project cost exceeds the estimated loan amount?

If a project satisfies the criteria in §§ 403.5(b) or 403.5(c), and costs exceed the estimated, then:

(a) If your project cost estimate increases after we issue a Conditional Commitment for Guarantee, but before we enter into the Loan Note Guarantee Agreement, you will be required to

notify us of the increase and justify the increase to us. We will then determine how such changes would affect any applicable statutory, regulatory, and budgetary requirements, and whether to re-evaluate the revised project to receive a loan guarantee, or reject your revised application. If we determine that we can re-evaluate your project, we may require you to make arrangements for additional funds or financing which are agreeable to us and the lender.

(b) If your actual project costs exceed the amount specified in the Loan Note Guarantee Agreement, you will notify us and we will consult with you regarding such cost increases to determine what course of action to take, including requiring you to obtain additional funds to finish the project in a manner satisfactory to us and the lender.

(c) Any additional funding or financing must be consistent with Public Law 109-451, all requirements of this part, and any other statutory, regulatory, or budgetary requirements necessary for Reclamation approval.

§ 403.52 What interest rates and charges apply to my guaranteed loan?

(a) Your loan will bear interest at a rate or rates negotiated between you and the lender. They must be fixed rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to our review and approval. We will determine if the rate is reasonable after consultation with the Treasury Department, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee Agreement must be approved by us.

§ 403.53 Can I prepay or refinance a guaranteed loan?

You must negotiate any prepayment or refinancing terms on a loan guarantee with the lender, subject to our consent. All applicable statutory, regulatory, and budgetary requirements must be met for Reclamation consent.

§ 403.54 When can an entity begin actual "on the ground" work on the project to be financed?

(a) An entity can begin actual work on the facilities or components upon issuance of the Loan Note Guarantee Agreement.

(b) Any work done by a water user entity more than 90 days before a Loan

Note Guarantee Agreement is issued may not be included in the eligible project costs. In addition, any work initiated by a water user entity 90 or fewer days prior to our issuing a Loan Note Guarantee Agreement may or may not be included in the eligible project costs and would be done at the risk of not receiving the loan guarantee, even though such work may have been approved by us and included in the Conditional Commitment for Guarantee.

§ 403.55 [Reserved]

§ 403.56 Can the repayment of a guaranteed loan be subordinated to any other financing?

No. We will only guarantee a loan under this part subject to the condition that the obligation is not subordinate to other financing. In addition:

(a) For projects without pledged collateral, the loan must be superior to any other financing for the project (as approved by Reclamation) and on a position of parity with regard to other non-collateralized obligations of the borrower; i.e., in the event of a default, all non-secured lenders are affected on a proportionate basis.

(b) For all other eligible projects, the loan must be fully secured through project facilities pledged as collateral for the loan and there shall be no other liens on such collateral. Consistent with the requirements of the Act, the rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreement, shall be superior to the rights of any other person with respect to the property.

(c) Where joint financing of a project occurs, the loan for which a guarantee is sought from Reclamation must have at least a parity position with the other lender(s), such that in the event of default, each lender will be affected in proportion to the share of financing it provides.

(d) The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

§ 403.57 Under what conditions would the United States not pay the guaranteed portion of a loan?

(a) The Loan Note Guarantee Agreement will not be enforceable by

the lender to the extent that any loss is a result of fraud, violation of usury laws, negligent servicing, or failure to obtain any security designated in the Lender's Agreement, regardless of when Reclamation acquires knowledge of any of the foregoing.

(b) For purposes of this provision, negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a reasonably timely manner, or acting significantly contrary to the manner in which a reasonable and prudent lender would act up to the time of loan maturity, or until a final loss is paid.

(c) Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by Reclamation in the Conditional Commitment for Guarantee and Loan Note Guarantee Agreement. Reclamation will review all loss claims, and claims may be denied, for example, in cases where the lender does not perform reasonable and customary servicing of the loan or claims include amounts not covered under the terms of the Loan Note Guarantee Agreement.

§ 403.58 Will the requirements of the Reclamation Reform Act of 1982 apply?

No. The loan to be guaranteed is between the borrower and a private lending institution and therefore does not meet the definition of a contract as provided in Section 202(1) of the Reclamation Reform Act of 1982.

§§ 403.59–403.62 [Reserved]

Subpart F—Default Actions and Termination.

§ 403.63 What options do I have if I have problems repaying the guaranteed loan?

If you have problems paying your loan, contact Reclamation and your lender for consideration of possible options.

§ 403.64 How can Reclamation help me if I can't resolve repayment problems with my lender?

If you cannot resolve repayment problems with your lender, Reclamation

may, before default, enter into an agreement with your lender to pay the principal and interest payment you currently owe the lender. Although we do not anticipate having sufficient funds or justification to exercise this option, we may consider this option if all of the following conditions are met:

(a) The non-Federal borrower is unable to meet the payment and is not in default;

(b) We determine that it is in the public interest that you be permitted to continue your project, and that the probable net benefit to the Federal Government in making such payment on your behalf is greater than that which would result if your guaranteed loan defaulted;

(c) We have sufficient funds specifically appropriated and available for this purpose;

(d) The payment authorized is not greater than the amount of principal and interest that you are obligated to pay under the terms of the Loan Note Guarantee Agreement;

(e) You agree to execute all written agreements required by us for such purpose and reimburse us for the payment we make on terms and conditions satisfactory to us; and

(f) You will, and are financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due and on other debt obligations of the project.

§ 403.65 What happens if I still can't make my payments after working with the lender and Reclamation?

If you cannot make payments after working with the lender and with Reclamation under § 403.63, then the lender may start default proceedings.

§ 403.66 What are the actions and timelines associated with default proceedings?

The lender will notify us when your loan payment is 30 days past due. If the payment becomes 60 days past due, the lender will meet with you and us to discuss default proceedings and potential resolution of the problem. The timeframe for default proceedings are shown in the following table:

Action in the default process	Timeframe (days from pmt due date)	
	Collateral pledged	No collateral pledged
Lender notifies Reclamation that loan is past due	30	30
Lender meets with Reclamation and borrower to discuss default proceedings and potential resolution of the problem	60	60
Reclamation, Borrower, and lender seek possible cures	75	75

Action in the default process	Timeframe (days from pmt due date)	
	Collateral pledged	No collateral pledged
Reclamation and lender determine whether a cure is possible. If no cure can be found, the loan is in default and any collateral pledged for the loan becomes eligible for liquidation	90	90
Lender submits a proposed method of liquidation in writing	120	N/A
Reclamation informs lender if liquidation plan is approved	150	N/A
Lender files an estimated loss claim if liquidation will exceed 90 days	180	N/A
Lender files final Report of Loss	210	120
Reclamation makes loss payment	270	180

§ 403.67 What is the process for liquidation of pledged collateral?

(a) Any of the following factors may lead to a decision to liquidate:

(1) The loan has been delinquent 90 days;

(2) Delaying liquidation will jeopardize recovery of the loan collateral; or

(3) Borrower or lender has been uncooperative in resolving the default;

(b) The lender must, within 30 days after a decision to liquidate, submit to Reclamation in writing a proposed method of liquidation. Reclamation will not make any payments for estimated or actual losses prior to final Report of Loss.

(c) Within 30 days after receiving the liquidation plan, we will inform the lender in writing whether we concur.

(d) The lender will discontinue interest accrual at the point of default, or 90 days after the first payment was missed, whichever is earlier.

(e) When the lender conducts the liquidation, it must account for funds during the period of liquidation and will provide us with reports at least quarterly on the progress of the liquidation. Only expenses authorized by Chapter 9 plans or Chapter 11 reorganizations, or Chapters 11 or 7 liquidations (United States Bankruptcy Code) may be deducted from collateral proceeds, if any.

§ 403.68 What is the timeline for filing a Final Report of Loss?

Within 30 days after liquidation of all collateral, the lender must prepare a final Report of Loss and submit it to us. We will not guarantee interest beyond the point of borrower default. We will pay the approved loss payment within 60 days after reviewing the final Report of Loss and accounting of the collateral.

§ 403.69 [Reserved]

§ 403.70 What interest does the lender have in the guaranteed loan after Reclamation makes a loss payment?

When we receive a final Report of Loss and pay the loss claim, we are immediately subrogated to the lender in

all rights with respect to the guaranteed loan. The lender must sign and deliver to Reclamation an assignment of any rights it may have had with respect to the guaranteed loan.

§ 403.71 What will Reclamation do if a borrower defaults?

If a borrower defaults, we are required to notify the Attorney General. The Attorney General will take appropriate action to recover the unpaid principal and interest due from assets of the defaulting non-Federal borrower associated with the obligation, or any other collateral pledged to secure the obligation.

§ 403.72 When does the Loan Note Guarantee Agreement terminate?

A Loan Note Guarantee Agreement under this part will terminate automatically upon:

(a) Full Repayment of the guaranteed loan;

(b) Full Payment of any loss obligation or negotiated loss settlement as described in the Lender's Agreement; or

(c) Written request from the lender to Reclamation, upon return of the Loan Note Guarantee Agreement to Reclamation.

§ 403.73 What happens if the non-Federal party breaches the existing Loan Note Guarantee Agreement?

The Federal Government reserves the right to prosecute both the borrower and the lender to the fullest extent possible under existing laws until full recompense has been made and the conditions of the Loan Note Guarantee Agreement have been fulfilled. In addition, if a Loan Note Guarantee Agreement is breached, the Borrower will no longer be eligible to receive a Federally-guaranteed loan for any of its future activities or projects, and may not be eligible for other Federal assistance. Furthermore, any lender in breach of a Loan Note Guarantee Agreement will be responsible for paying any additional fees as determined necessary to the Federal Government and will not be allowed to hold a Federal Government

note until the United States Treasury has been paid in full.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 070717357-7593-02]

RIN 0648-AV77

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes new Federal American lobster (*Homarus americanus*) regulations that would implement a mandatory Federal lobster dealer electronic reporting requirement, changes to the maximum carapace length regulations for several lobster conservation management areas (LCMAs/Areas), and a modification of the v-notch definition in certain LCMAs. This action responds to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). Implementation of a mandatory Federal lobster dealer reporting requirement would be consistent with the recommendations for Federal action by the Commission in Addendum X to Amendment 3 of the ISFMP and would assist in providing a more comprehensive and consistent coastwide accounting of lobster harvest data to facilitate stock assessment and fishery management. Additionally, this action intends to implement new and revise existing Federal lobster

regulations to support the Commission's ISFMP by adopting v-notching and maximum carapace length measures (together referred to as broodstock protection measures) in several management areas that are, for the most part, identical to those already enforced by the states. The incorporation of these proposed broodstock protection measures would support the Commission's ISFMP by reducing confusion and facilitating enforcement within and across management areas. Finally, the proposed action would expand the Commission's recommended broodstock protection measures to include the Outer Cape Management Area to provide further opportunities to protect lobster broodstock in this management area.

DATES: Comments must be received no later than 5 p.m. eastern standard time on or before November 20, 2008.

ADDRESSES: You may submit comments, identified by RIN number 0648-AV77, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.

- Fax: (978) 281-9117, Attn: Peter Burns.

- Mail: Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Lobster Proposed Rule."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), prepared for this regulatory action may be obtained at the mailing address specified above; telephone (978) 281-9327. The documents are also available online at <http://www.nero.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this proposed rule may be submitted to the mailing address listed above and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, phone (978) 281-9144, fax (978) 281-9117.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The proposed regulations would modify Federal lobster regulations in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

One purpose of this action is to improve the availability and utility of fishery-dependent lobster data to meet the need for a more comprehensive baseline for assessing the status of lobster stocks coastwide. Additionally, this proposed action would enhance lobster broodstock protection and facilitate enforcement of lobster measures by revising American lobster maximum carapace size and v-notch requirements, consistent with the recommendations of the Commission in the ISFMP. Finally, this proposed action would expand the curtain of protection on broodstock lobster traveling among lobster management areas by extending the revised maximum carapace size and v-notch requirements to the Outer Cape Management Area.

The need for action is rooted in the most recent American lobster stock assessment and in recommendations in a subsequent peer review panel report. The findings of the stock assessment and peer review panel prompted the Commission to take action by adopting measures to address the need for

improved fishery data collection and broodstock protection. The Commission took action to address these issues through the adoption of Addendum X and Addendum XI to Amendment 3 of the ISFMP. The focus of this rulemaking is on the mandatory dealer reporting requirements in Addendum X and the broodstock protection measures of Addendum XI. As explained in greater detail later in this document and the associated draft environmental assessment completed for this action, NMFS analyzed three alternatives for each of the three regulatory actions proposed: mandatory dealer reporting requirements; the maximum carapace size; and, revisions to the v-notch requirements. The three alternatives for each of the three proposed regulatory actions included: a status quo (no action) alternative; an alternative that would implement the Commission's ISFMP recommendations in Addendum X and XI; and a third modified alternative that would vary in certain aspects from the Commission recommendations, but would be compatible with the Commission's ISFMP.

Background

American lobsters are managed within the framework of the Commission. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission, under the provisions of the Atlantic Coastal Act, decides upon a management strategy as a collective and then forwards that strategy to the states and Federal government, along with a recommendation that the states and Federal government take action (e.g., enact regulations) in furtherance of this strategy. The Federal government is obligated by statute to support the Commission's ISFMP and overall fishery management efforts.

In support of the ISFMP, the National Marine Fisheries Service (NMFS) proposes to revise Federal American lobster regulations in response to the Commission's recommendations for Federal action in Addenda X and XI. The addenda were themselves a response, at least in part, to conclusions contained in the most recent lobster stock assessment. More specifically, the 2005 stock assessment and peer review process identified the dearth of landings data in the American lobster fishery as an inhibitor to the effective evaluation of the status of the lobster resource, that available data are woefully inadequate

to fulfill the management needs of the resource, and that a mandatory catch reporting system is needed. Such conclusions provided the impetus for Addendum X's mandatory reporting requirements, which has spawned the proposed Federal dealer reporting requirement described in this proposed rule.

This same assessment and peer review process concluded that the Southern New England (SNE) lobster stock is suffering from depleted stock abundance and recruitment with high dependence on new recruits. The SNE stock component is in poor shape with respect to spawning, recruit and full-recruit abundance indices. The assessment results also indicated that the Georges Bank (GBK) lobster stock, although in a stable state with respect to abundance and recruitment, is also dependent on new entrants to the fishery a cause for concern that the fishery is too reliant on newly recruited lobster. Accordingly, the Commission adopted Addendum XI, which sought to protect SNE and GBK broodstock by creating new maximum carapace lengths and implementing a more restrictive definition of a v-notch in certain Lobster Management Areas. Accordingly, NMFS proposes three independent regulatory actions:

(1) Requiring all Federal lobster dealers to electronically report trip-level lobster landings to NMFS on a weekly basis;

(2) Implementing a maximum carapace length restriction for lobster in Area 2, Area 3, Area 6, and the Outer Cape Management Area and revising the maximum carapace length requirements for Areas 4 and 5; and

(3) Revising the Federal definition of a standard v-notched lobster, applicable to lobster in all areas, with the exception of Area 1.

Proposed Changes to the Current Regulations

NMFS proposes to amend the Federal lobster regulations by expanding reporting requirements to all Federal lobster dealers, and revising the maximum carapace length regulations and v-notch definition for several LCMAs.

Mandatory Federal Lobster Dealer Electronic Reporting

Consistent with the Commission's recommendations in Addendum X, NMFS proposes to implement regulations to extend mandatory reporting coverage to all Federal lobster dealers. Currently, if a Federal dealer holds a lobster dealer permit and no other Federal seafood dealer permits,

that dealer is not required to report lobster or other seafood purchases to the Federal government. Based on the analysis completed for this action, 148 Federal lobster dealers (29 percent of all Federal lobster dealers) fall in this category and, therefore, are not currently subject to Federal reporting requirements. The remaining 71 percent of Federal lobster dealers hold another Federal seafood dealer permit that requires routine reporting. Such dealers are mandated to report all species purchased, including lobster.

Accordingly, this proposed action would affect only those Federal lobster dealers not currently required to report lobster sales based on reporting requirements mandated by other federally-managed fisheries. Under this requirement, all Federal lobster dealers would complete trip-level reports and submit them electronically each week, consistent with current Federal dealer reporting requirements. This proposed measure differs from the Commission's recommendations because this proposed measure would mandate electronic dealer reporting and would collect the data in a timelier manner (weekly vs. monthly).

The Commission's Expanded Coastwide Data Collection Program set forth in Addendum X is intended to increase the quality and quantity of fisheries-dependent and fisheries-independent data collected at the state and Federal level. Federal fishery-independent data collection programs, such as sea sampling and port sampling activities, are longstanding and underway as implemented by NMFS, contributing substantially to the pool of information used for lobster stock assessments, as are the trawl surveys conducted by the Northeast Fisheries Science Center. NMFS believes that these Federal fisheries-independent data collection activities exceed those as identified in Addendum X. Further, with respect to fishery-dependent data collection, Addendum X mandates participating states, and recommends that NMFS, require at least 10 percent of all lobster harvesters to report their catch. Currently, approximately 61 percent of all Federal lobster vessels report their catch through the NMFS Vessel Trip Report (VTR) program, exceeding the reporting threshold under the ISFMP. Since these fishery-dependent and fishery-independent activities in place already exceed those recommended in Addendum X, NMFS intends to take no further action in this rulemaking to modify the current level of harvester reporting. Consequently, the harvester reporting and fishery-independent elements of Addendum X

are not part of this proposed rulemaking.

Both NMFS and the states acquire dealer and harvester data, although the frequency and reporting requirements vary across state and Federal jurisdictions. In an effort to achieve a common forum for collecting and assessing coastwide fishery data, NMFS and its Atlantic states partners developed the Atlantic Coastal Cooperative Statistics Program (ACCSP). ACCSP is a state and Federal fisheries statistical data collection program. The data are compiled into a common management system to facilitate fishery management and meet the needs of fishery managers, scientists and the fishing industry. To more specifically address the need for real-time landings data to assist in fisheries management, the ACCSP established the Standard Atlantic Fisheries Information System (SAFIS). Since 2003, SAFIS has evolved to handle the fisheries data from state-permitted dealers from participating states along the Atlantic coast. Since May 2004, SAFIS has incorporated Federal seafood dealer data.

Although SAFIS was intended to be the overall entry point and warehouse for state and Federal dealer data, NMFS relies on its Commercial Fisheries Database System (CFDBS), managed by the Northeast Fisheries Science Center, as the official warehouse for Federal dealer data even though all Federal and state data are, ultimately, available on the SAFIS database. The proposed Federal dealer reporting requirements would be implemented consistent with those reporting requirements currently in place for Federal lobster dealers and other Federal seafood dealers who are already subject to mandatory electronic reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act. The mandatory electronic reporting requirements for fisheries managed under the authority of the Magnuson-Stevens Act are set forth in 50 CFR 648.6 and 50 CFR 648.7 of the Federal fisheries regulations and specify the data elements and technological requirements needed for electronic reporting. As such, Federal lobster dealers who would be affected by the proposed reporting regulations would be required to submit their weekly reports into SAFIS.

Federal lobster dealers affected by the proposed action, similar to Federal dealers already required to report, would be required to submit electronic reports to NMFS by selecting one of three methods: direct real-time, online data entry into SAFIS; off-line data entry using software provided by NMFS, followed by file upload to SAFIS; or

proprietary record-keeping software which could be uploaded to SAFIS. Those entering the data directly into the SAFIS system could do so with a personal computer and Internet access. Those who choose to enter the data using a file upload system would also need a computer and Internet access. However, these respondents may be eligible to obtain the file upload software through a NMFS contractor, at no cost to the impacted dealer. The no-cost option could mitigate some of the financial impact to Federal lobster dealers who would be subject to mandatory dealer reporting. However, all impacted lobster dealers would still be required to maintain a personal computer and Internet connection to upload the data to NMFS.

Maximum Carapace Length Requirements

In support of the Commission's measures in Addendum XI to address the recommendations contained in the stock assessment and peer review process, NMFS proposes to implement a maximum size of 5¼ inches (13.34 cm) on all (male and female) lobsters in Area 2 wherein there is currently no maximum size requirement in the Federal regulations. In Area 4, the current Federal requirement of 5¼ inches (13.34 cm) pertains to female lobster only. This proposed regulatory action would broaden the scope of the maximum size to include all lobsters (male and female). In Area 5, the current Federal requirement is 5½ inches (13.97 cm), applicable only to female lobster. This proposed regulatory action would reduce the maximum size to 5¼ inches (13.97 cm) for both male and female lobster. Currently, the Federal lobster regulations for Area 4 and Area 5 allow recreational fishermen to retain one female lobster that exceeds the maximum size requirement as long as such lobster is not intended for commercial sale. This so-called "trophy" lobster allowance in Area 4 and Area 5 would be eliminated. In Area 6, this proposed action would establish a maximum size of 5¼ inches (13.34 cm) for all lobster harvested by Federal vessels in this area.

Additionally, this regulatory action would establish a maximum carapace size requirement in Area 3. The Commission's plan requires the states to have implemented a lobster maximum carapace length of 7 inches (17.78 cm) by July 1, 2008, reduced by ⅛ inch (0.32) during each of two successive subsequent years until a terminal maximum size of 6¾ inches (17.15 cm) is in place in July 2010. Given the timing associated with Federal

rulemaking on this proposed action, the earliest NMFS would establish a 7-inch (17.78 cm) maximum size would be July 1, 2009. Therefore, to be consistent with the Commission and States' recommended time frame for implementation and fully complement state regulations, this proposed action would implement the maximum size recommended by the Commission for the second year of the three-year implementation schedule and implement the 6 7/8-inch (17.46 cm) maximum size in July 2009. Consistent with the ISFMP, the terminal maximum size for Area 3 of 6¾ inches (17.15 cm) would take effect on July 1, 2010. The aforementioned measures would be consistent with the Commission's plan. The Commission's plan does not include a maximum size requirement for the Outer Cape Area, the only Area without a maximum size requirement under the Commission's ISFMP. NMFS, however, in this regulatory action proposes to adopt a maximum carapace length requirement for the Federal waters of the Outer Cape Area, consistent with the sizes and implementation time-line proposed for Area 3. It is anticipated that such action would provide additional conservation benefits for lobster migrating through this area from the other stock areas.

Modified Definition of V-Notch

As approved by the Commission in Addendum XI, NMFS proposes to revise the v-notch definition in Areas 2, 3, 4, 5 and 6 to apply to any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as ⅛ inches (0.32 cm), with or without setal hairs. In the proposed revision, v-notched lobster also pertains to any female which is mutilated in a manner which could hide, obscure, or obliterate such a mark. Under the Commission's ISFMP, the zero tolerance v-notch definition for Area 1 would remain unchanged, and the Outer Cape Area would maintain the current definition of a v-notch (at least ¼ inch (0.64 cm) in depth, without setal hair). NMFS however, proposes in this regulatory action to also include the Outer Cape Management Area under the revised v-notch definition as specified in the Commission's ISFMP for Areas 2, 3, 4, 5 and 6.

Comments and Responses

In response to the Commission's recommendations for Federal action in Addenda X and XI, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on September 21, 2007 (72 FR 53978), to inform the public that the agency is considering

implementing several management measures including a mandatory electronic reporting requirement for Federal lobster dealers and changes to the v-notch and maximum size regulations in several LCMAs. The comment period closed on October 22, 2007.

A total of eight entities commented in response to the ANPR. Some of the comments spoke to more than one of the proposed actions. The comments can be categorized as follows: Six commentators wrote in opposition of the mandatory electronic Federal lobster dealer reporting requirement; One commentator commented in favor of the proposed maximum size and v-notch requirements; Two commentators opposed the maximum size requirements.

The dealer reporting comments were received from three lobster dealers, the State of Maine Department of Marine Resources, and two lobster fishermen's organizations. The general theme of these comments was that mandatory weekly electronic reporting would add more administrative burden to lobster dealers and it would be redundant since many dealers are already providing the data to their respective state fisheries agency. There were no comments in favor of this measure. Two comments opposing the maximum size requirements were received by a mobile gear fishermen's group and a recreational diving group. The comments and the NMFS response to each comment are provided here.

Comment 1: Three lobster dealers from Maine wrote in opposition to the mandatory electronic dealer reporting requirement, generally stating that this measure would unnecessarily add to the reporting burden already mandated by the state. One dealer is concerned that this additional burden would cause the business to have to hire additional office staff.

Response: NMFS understands that there might be a small amount of seeming redundancy for those Federally permitted dealers who also have a state dealer permit and who are thus already bound to report by virtue of their state permit. On balance, however, NMFS believes that the utility of electronic reporting outweighs the minor burden associated with the minority of dealers who would have to report both electronically and by paper. More specifically, the majority of Federal lobster permit dealers, approximately 71 percent, already have to report electronically. Collection and assembly of the requisite data likely the most time intensive task is a one-time event that must occur regardless of the format in

which the data is ultimately reported (and such data is undoubtedly being collected by the business in some form as part of the dealer's regular business practices). Although there might be some start-up costs associated with electronic reporting (See NMFS Response to Comment 4), computer reporting is intuitively more efficient and less time intensive than having to write the data out and submit it in paper format. Whether computer reporting would ultimately result in new efficiencies in every case is difficult to gauge and might be dependent on individuals on a case by case basis. Nevertheless, NMFS has received no information to suggest that its proposed electronic reporting would be a significant additional burden to the 29 percent of the dealers who do not presently report in such a format, much less that the burden would cause the need to hire additional office staff.

In proposing electronic Federal lobster dealer reporting, NMFS balances the relatively small additional burden against the utility gained by the proposed action. First, there is great utility for managers having access to, and thus having their decisions guided by, up-to-date harvest information. Electronic reporting allows for far more speedy collection of data than can be accomplished through a paper reporting system. The submission of paper reports is cumbersome and the data are not consistently loaded by the states into the SAFIS system in a timely manner. Some states require trip-level dealer reports be submitted on a monthly basis at which time, state employees enter in the data. Consequently, the data may not reach the SAFIS system until six weeks or more after a particular lobster fishing trip which could hamper fisheries management and assessment efforts. Conversely, under the proposed electronic reporting process, once received, the data is already in the system, with no data entry or handling of paper reports needed. Some states may even eliminate their paper-based reporting requirements for those state dealers who would be required under a Federal mandatory reporting program to report to NMFS on an electronic basis, although such an outcome is speculative.

Second, NMFS believes that data received through different systems can undermine the integrity and usefulness of the data. NMFS finds it advantageous for its data to be collected in consistent fashion, not only for administrative efficiencies (NMFS already has a successful and tested electronic reporting system in place for other species), but for the statistical integrity

of collecting similar data sets for a single species by the same means. Further, NMFS's experience suggests that while overall compliance with Commission plans is excellent, states do not always interpret, and are not always able to implement, the plans consistently and uniformly. Accordingly, NMFS believes it more prudent in this instance to mandate a single uniform Federal lobster dealer reporting system rather than rely on the eleven states on the Lobster Board to submit data for certain Federal dealers according to the individual state's reporting program.

Comment 2: One dealer wrote that he purchases lobster from fishermen who drop off their catch on a floating lobster car. The lobster are dropped off by fishermen when the dealer is not there, complicating the ability to garner specific data on where and when the lobster were harvested.

Response: The Commission's plan recommends that the dealer provide the statistical area where the lobster were harvested. NMFS has considered but rejected this recommendation and, at this time, does not propose that Federal dealers provide data on where the lobster they purchase were harvested. NMFS is aware that some lobster dealers in Maine acquire lobster without interacting directly with the harvester as lobster are collected by the dealers from the harvesters' lobster cars. NMFS believes that lobster harvesting information is best provided by the harvester, not the dealer.

Comment 3: One lobster cooperative manager commented that dealer reporting for lobster is not necessary since lobster is not a quota-managed species.

Response: Although the lobster fishery is not managed by a quota system, the benefits of consistent fishery-dependent data in effectively managing the resource cannot be overstated. The lobster fishery is the most economically lucrative in the Northwest Atlantic, with ex-vessel revenues totaling nearly \$395 million in 2006, sustaining numerous fishing communities. Yet, only 61 percent of Federal lobster harvesters and only 71 percent of Federal lobster dealers provide landings data to NMFS. The most recent peer-reviewed lobster stock assessment indicated that improvements to the quality and quantity of fishery-dependent data, including dealer data, are needed to facilitate the assessment of the lobster stocks. In the absence of a mandatory Federal harvester reporting program NMFS is proposing to act on the Commission's recommendation to implement a mandatory dealer reporting

program to complement the actions of the states in enhancing the quality and quantity of lobster fishery data to assist in the management of this important fishery.

Comment 4: The State of Maine Department of Marine Resources responded in opposition to the proposed mandatory dealer reporting measure, indicating that it would impact about 86 small dealers in Maine. The Maine Department of Marine Resources is already collecting trip-level data from dealers on a monthly basis and believes that electronic reporting requirements would be too burdensome on dealers who do not have access to the Internet or to a computer and are now able to provide this data on paper trip tickets to fulfill state requirements. The State of Maine believes this Federal action could jeopardize the relationship that Maine has fostered with its dealers to facilitate the receipt of lobster landing data.

Response: Maine's industry outreach to establish the cooperation and trust needed to acquire this important data is laudable, as is the commitment of the lobster industry to provide invaluable fishery-dependent data for management purposes. This relationship embodies the concept of cooperative management that is vital to the management framework for the lobster fishery. It is not clear, however, how a Federal reporting requirement would undermine industry cooperation at the state level. Integration of an electronic reporting program may enhance the relationship between industry and public agencies by reducing the time and costs of both providing and acquiring the data over time.

NMFS realizes that although a Federal electronic dealer reporting requirement would only impact a minority of lobster dealers (estimated to be 29 percent of all Federal lobster dealers), a large portion of the 29 percent come from Maine (88 of the 148 non-reporting Federal lobster dealers are based in Maine, based on NMFS permit data). At the same time, 36 dealers in Maine are successfully reporting on an electronic basis. However, as the largest lobster harvesting state by far, Maine harvest data is critical to ensure the responsible management of the fishery.

It is evident, both anecdotally and from some of the comments received that some dealers, especially in more remote areas, may not use computers as part of their business operations. Therefore, it is assumed that the State of Maine and other states allow dealers the option of submitting either paper or electronic reports to maintain current business practices and avoid the start-

up and maintenance costs associated with acquiring the technological means to conduct business in an electronic format. For the purposes of this proposed rulemaking, NMFS estimates that the initial costs to dealers would be about \$580 for an adequate computer and approximately \$652 annually to support Internet access for those dealers that currently do not have a computer or Internet service. The potential impact that the cost of acquiring a computer and maintaining Internet access would have on affected Federal dealer business income is uncertain. However, potential impacts to lobster dealers with no other Federal permits could be assumed to be similar to Federal dealers who are currently subject to mandatory reporting whose business is solely or primarily comprised of lobster sales. Under this assumption, the estimated first-year cost of purchasing equipment and Internet access would represent 0.47 percent of gross net sales assuming a 40 percent markup (based on a NMFS economic analysis conducted on lobster fishery transactions) and median purchases of 134,000 pounds (60,909 kg) with net gross sales valued at \$245,000 during 2007. These estimates are based on dealer reports for all Federal lobster permit holders who were subject to mandatory reporting during 2007. At these values, the annual cost of maintaining Internet access would be 0.27 percent of net gross sales. The expected costs would be lower for any dealer who already has Internet access and a computer meeting the minimum specifications. Further, the computer and Internet service, having been purchased, would have great utility and application to improve other aspects of the dealer's business in ways not associated with data reporting.

Put another way, based on the assumed markup of 40 percent, dealers would receive \$1.83 per pound over the cost of purchasing lobster from harvesters. This translates into sales of 673 pounds (305.3 kg) of lobster to cover the cost of purchasing equipment and Internet access in year 1 and 356 pounds (161.8 kg) of lobster sales to cover the cost of Internet access on an ongoing basis.

Electronic dealer reporting, as proposed in this regulatory action, despite the initial costs, could save time and money for dealers affected by this requirement. Additionally, it has the potential to save time for state agencies now devoting staff to hand-enter these paper reports for submission into the SAFIS system. In addition to the potential benefits to industry participants, reporting consistency with all other Federal dealers in possession

of limited access permits, and timeliness of electronic dealer reports represent additional benefits associated with this proposed electronic dealer reporting action. NMFS also analyzed an option to allow dealers one year to acquire the means necessary to provide electronic reports, however, it appears that this approach would merely defer the costs associated with acquiring the necessary technology to the following year, with savings limited to the uncommitted costs of Internet service.

In general, the proposed measures are based upon the lobster ISFMP that was created and overseen by the states. Further, the measures are the result of addenda that were unanimously approved by the states, including the State of Maine, and are consistent with regulations already in place at the state level.

Comment 5: A commercial lobster fishing industry association commented in favor of the proposed maximum size and v-notching requirements as described in the ANPR.

Response: NMFS agrees and believes that the implementation of the proposed measures would be compatible with the Commission's recommendations for Federal action and would reduce confusion on the part of the participants and regulatory agencies, and facilitate enforcement by aligning state and Federal lobster management measures. Additionally, by expanding the scope of this action to include the Outer Cape LCMA under the maximum size and v-notching requirements as proposed, some unknown level of protection to transient lobster moving among different management areas may be realized. Further, this action could reduce the potential for more directed fishing effort into the Outer Cape LCMA that could occur if that area remained the only LCMA not governed by a maximum size requirement and bound to a less restrictive definition of a legal v-notch.

Comment 6: A commercial fishing industry group whose membership includes vessels participating in the non-trap lobster fishery sector wrote to oppose the proposed maximum size requirements in the ANPR. The commentator adds that the non-trap sector has a comparatively negligible impact on lobster mortality although the lobster bycatch of this sector provides an essential contribution to the groundfish fleet. The commentator requests that NMFS justify the biological need for this restriction as well as the economic analysis of its impacts.

Response: With the exception of the Outer Cape Area, NMFS action would

not further impact lobster vessels since they are already subject to the new maximum sizes under state regulations. NMFS has proposed to implement the recommended maximum sizes for Area 2, Area 3, Area 4, Area 5 and Area 6 consistent with the Commission's plan to diminish confusion that could occur with differing state and Federal regulations in these areas and to support the intent of these measures to provide additional broodstock protection as advised through the most recent American lobster stock assessment peer review process. Consistent with this conservation premise, NMFS is proposing to extend the Area 3 maximum size requirement to the Outer Cape Area. The intent of this proposed action would be to provide further protection for lobster broodstock in this area which is known to be a corridor for lobster moving between inshore and offshore areas and between stock and management areas. In other words, there is the potential to undermine the maximum size broodstock protection benefits of these proposed measures if lobster are protected in one area (i.e., caught, but released back to the sea), only to have that lobster caught and kept while transiting another area. In addition, at-sea enforcement would be significantly enhanced if the proposed broodstock measures were implemented in all LCMAs.

The commentator has asked that the economic impacts of this proposed action to the non-trap sector be addressed. Given previous state action to adopt the new maximum size requirements with the exception of the Outer Cape Area, the proposed Federal action would only impact non-trap lobster harvest of lobster greater than 6 3/4 inches (17.15 cm) taken from the Outer Cape Area. Based on NMFS observer data, approximately 5.7 percent of the lobster taken by the non-trap fleet in Area 521, used as a proxy for the Outer Cape Area, exceeded 6 3/4 inches (17.15 cm). Based on this information and in consideration of average lobster price, NMFS estimates that the three-year average value of reduced lobster landings for non-trap vessels fishing in the Outer Cape Area would range from less than \$1 to under \$1,000 annually. The estimated median loss of foregone lobster value would be about \$117 annually per affected vessel. In terms of impacts on total fishing revenue for affected non-trap vessels, these values translate into losses ranging from less than 0.01 percent to 1.2 percent. Therefore, the relative change in total fishing income is much less than the expected change in Outer Cape Area

landings since non-trap vessels may fish for lobster in other areas and because they earn the majority of their fishing income from species other than lobster. However, a survey of lobster vessels indicates that increased fuel costs have caused a reduction in the profit margin for some fishing businesses. In the Outer Cape Area the added effect of reduced revenue potential could compound the economic stress on the financial viability of lobster businesses operating in the area.

Comment 7: A representative of a recreational diving club wrote to express concerns over the passage of Addendum XI wherein the Commission adopted the revised maximum sizes to include both male and female lobster. This group submitted a proposal before the Commission's Lobster Management Board after adoption of Addendum XI to request the recreational take of one oversized lobster per trip by divers. Although discussed at several Board meetings, both prior to and after approval of Addendum XI, the proposal was not approved by the Board.

Response: Although NMFS acknowledges that the proposed rule might have some impact on recreational divers seeking so-called "trophy sized" lobster, NMFS believes that, on balance, applying maximum sizes consistently to male and female lobster is prudent. As a preliminary matter, maximum size restrictions are known to protect larger lobsters which, according to the best available scientific information, are more prolific breeders. Further, application of the standard to both male and female lobsters would make the regulation more consistent, understandable, and enforceable. Additionally, the maximum size restriction of 5¼ inches (13.34 cm) would still allow for the capture of large lobsters and NMFS has received no information to suggest that divers currently diving for oversized lobster would not dive for lobsters in excess of 5 inches (12.7 cm) which would still remain legal under this proposed rule. Regardless of Federal action, recreational divers are already bound by the proposed maximum size revisions by virtue of the states having approved the restrictions of the Commission's Addendum XI.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism implications as defined in E.O. 13132. The proposed measures are based upon the lobster

ISFMP that was created and is overseen by the states. The proposed measures are the result of addenda that were unanimously approved by the states, have been recommended by the states through the Commission, for Federal adoption, and are in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP which makes recommendations for Federal action. Additionally, these proposed regulations do not pre-empt state law and do nothing to directly regulate the states.

This proposed rule contains a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the Mandatory Federal Lobster Dealer Electronic Reporting requirement is estimated to average four minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the State, Federal and Constituent Programs Office at the **ADDRESSES** above, and by e-mail to David.Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reason for consideration, and the legal basis are contained in the **SUMMARY** section of the preamble in this

proposed rule. A summary of the IRFA follows:

The proposed (preferred) action would implement a mandatory electronic Federal lobster dealer reporting requirement. In addition, it would revise the current lobster maximum carapace length restrictions in Area 4 and Area 5 and establish a maximum size in Areas 2, 3, and 6. Beyond the scope of the ISFMP, the proposed Federal action would expand the Area 3 maximum size requirement to the Outer Cape Area wherein the Federal regulations do not currently limit lobster harvest based on a maximum carapace length. Additionally, it would include the Outer Cape Area under the more restrictive 1/8-inch (0.32 cm) v-notch requirement.

The proposed management measures would affect small entities engaged in several different aspects of the lobster fishery. The affected entities include lobster dealers, party/charter vessel operators, and commercial fishers using trap and non-trap gears. The proposed action would implement a mandatory electronic reporting program for Federal lobster dealers, a maximum carapace length limitation and a change in the definition of a standard v-notched lobster. Specifically, the latter two measures, intended for lobster broodstock protection, would impact Federal vessels that fish in the Outer Cape Area.

Economic Impacts of the Proposed Rule on Small Entities

Mandatory Federal Lobster Dealer Electronic Reporting

Federal lobster dealers are the entity that would be most affected by this proposed requirement. According to the Small Business Administration (SBA), lobster dealers are considered small entities when they employ less than 100 people. NMFS does not collect employment data from Federally-permitted lobster dealers in the Northeast region. However, based on review of data reported in the U.S. Census Bureau's County Business Patterns it is estimated that all regulated entities that specialize in lobster wholesale trade, as well as those entities that may not specialize in the lobster trade yet would be required to comply with the proposed action, are presumed to be small entities for purposes of the Regulatory Flexibility Act (RFA).

The proposed action would require all federally-permitted lobster dealers to report all seafood purchases, including lobster, through an electronic reporting system. This action would only affect

regulated lobster dealers who are not already required report by virtue of holding at least one other Federal dealer permit requiring mandatory reporting. During 2007 there were 511 lobster dealers issued a Federal permit to purchase lobster. Of these dealers the majority (71 percent) were already required to report leaving 148 regulated small entities that would be required to comply with the proposed action.

To comply with the electronic reporting requirements, dealers would need a personal computer and Internet service. The required specifications for the personal computer are such that any recently purchased computer, and most older computers would meet the minimum specifications. For this reason, any dealer that currently owns a computer would not likely be required to purchase new equipment. The number of regulated lobster dealers who do not now own a computer is uncertain but is expected to be low. Those who already have Internet access and a computer would not have any specific costs associated with this new reporting requirement. It is estimated that the average start-up costs for those lobster dealers who do not have a computer would be about \$580 to purchase a personal computer and monitor that would meet or exceed the specifications needed to participate in the electronic dealer reporting program. Preliminary estimates of additional costs of about \$652 per year for Internet access would bring the total start-up costs to approximately \$1,232, with annual costs for Internet access continuing annually. The unknown number of dealers impacted by the proposed dealer reporting program, whom already own a computer but are not connected to the Internet, would assume the estimated annual fees for this service at about \$652 annually. Based on data from dealers who are currently required to report, these costs were estimated to be 0.47 percent of gross net sales (i.e. sales less the cost of purchasing lobster) in the first year for the one-time cost of purchasing a computer and the first year of Internet service. Ongoing costs were estimated to represent 0.27 percent of gross net sales.

Changes to Maximum Carapace Length Requirements and Revision to V-Notch Definition

Since the states have already implemented the maximum size and v-notch requirements for the affected areas, with the exception of the Outer Cape Area as proposed in this rulemaking action, the small entities impacted by the maximum size and v-notch provisions proposed herein

would be limited to the Federal commercial lobster fishing vessels and party/charter dive vessels that fish, or are permitted to fish, in the Outer Cape Area. The Outer Cape Area has been characterized as fishing on a population of transient lobsters migrating between inshore and offshore areas.

Party/Charter Vessels. Party/Charter operators are classified with businesses that offer sightseeing and excursion services where the vessel departs and returns to the same location within the same day. Relevant to this proposed action, these businesses include party/charter recreational fishing vessels which offer SCUBA divers recreational opportunities to harvest lobsters for personal use. The SBA size standard for this sector is \$7 million in gross sales. Although sales data are not available, party/charter operators in the lobster fishery tend to be small in size and do not carry a large number of passengers on any given trip. For these reasons it is expected that all regulated party/charter operators holding a Federal lobster permit would be classified as a small entity for purposes of the RFA. All Federal lobster party/charter permit holders are already required to abide by all state regulations under the most restrictive rule of the ISFMP. This means that the proposed action would only affect party/charter operators that take passengers for hire in the Outer Cape Area since this is the only area in the proposed Federal action not included for a maximum size or a more restrictive v-notch in the ISFMP and therefore, not under such restrictions by any state.

During 2007 there were a total of 31 Federal permit holders with a party/charter lobster permit. Of these vessels all but one held at least one other Federal party/charter permit (for another species), while the majority (24) held four or more other Federal party/charter permits in addition to the lobster permit. These data indicate nearly all lobster party/charter permit holders have at least one other Federal permit requiring mandatory reporting. Available logbook (VTR) data show that only 3 of the 31 lobster party/charter permit holders reported taking passengers for hire during trips when lobster were kept during the 2007 fishing year. Of the trips that did report landing lobsters none took place within NMFS statistical area 521, used a proxy for the Outer Cape Area. In fact, all for-hire recreational trips took place in statistical areas in the Mid-Atlantic region. Although the number of participating for-hire vessels was larger in Fishing Year (FY) 2005 (6 vessels) and FY 2006 (7 vessels), these vessels

also took recreational lobster fishing trips only within the Mid-Atlantic area. None took a for-hire trip in the Outer Cape Area.

These data suggest that participating for-hire lobster permit holders would not be affected by the proposed action in the Outer Cape Area although these permit holders may have been affected by action already taken by individual states. While the magnitude of any impact associated with state action is uncertain, it is likely to have been relatively small. In the areas where recreational lobster fishing was reported (corresponding to Area 4 and/or 5) a maximum size for female lobsters has already been in place for several years. Despite the state action and proposed Federal action to reduce the maximum size from 5½ inches (13.97 cm) to 5¼ inches (13.34 cm) in Area 5 and expand it to provide additional protection for male lobsters in Areas 4 and 5, these areas represent the southern terminus of the lobster resource. Therefore, eliminating the exemption for a trophy lobster would have little impact on the recreational fishery since the encounter rate with lobsters of that size is expected to be very low.

Federal Commercial Lobster Vessels. The SBA size standard for commercial fishing businesses is \$4 million in gross sales. According to dealer records, no single lobster vessel would exceed \$4 million in gross sales. Therefore, all operating units in the commercial lobster fishery are considered small entities for purposes of analysis. The economic impacts of the change in maximum size in the Outer Cape Area are uncertain since all vessels are not required to report their landings to NMFS. Survey data collected during 2005 by researchers at the Gulf of Maine Research Institute and made available to NMFS included information on lobster business profitability for vessels operating in Areas 1, 2, and 3. Operators in the Outer Cape Area were not specifically sampled. However, it is likely that these entities are of similar scale to operators that were sampled and fish on a lobster stock that bear some similarities to operators in Area 1 although the size composition of catch tends to be larger than would be the case in Area 1. Subject to these caveats, it was assumed that the cost and earnings profile for Area 1 survey participants would be a suitable proxy for financial performance of Outer Cape Area trap participants.

The survey data indicate that the majority of Area 1 lobster businesses were able to cover operating costs with gross sales. However, net earnings for the majority of businesses were below

median personal income for the New England region and only about 20 percent of lobster businesses earned a positive return to invested capital. Since 2005, fuel costs have more than doubled cutting average net return by about 30 percent; this is before taking into account the opportunity cost of the owner's labor or capital. Thus, profit margins have shrunk significantly since 2005 and even small changes in revenue streams could place lobster businesses in financial risk. However, as the following analysis describes, few vessels rely exclusively on the Outer Cape Area for lobster fishing revenue. Further, only a small percentage of the catch in the trap sector is expected to be impacted by the proposed measures.

Trap Gear Vessels. The proposed Federal action would directly affect only those Federal lobster vessels that selected the Outer Cape Area. For the 2007 fishing year, 184 Federal lobster trap vessels selected the Outer Cape as one of the potential trap fishing areas. Federal Fisheries Observer data suggest, in consideration of the terminal maximum size proposed in the preferred alternative of 6 inches (17.15 cm), trap vessels operating in this area would expect a reduction in catch of approximately 0.5 percent. Note, however, that a price premium is paid for larger lobsters such that the realized economic impact on lobster fishing businesses is likely to be proportionally larger than the expected change in catch.

Non-Trap Gear Vessels. Based on a three-year average (2005–2007) overall dependence on lobster for non-trap vessels ranged from 0.03 percent to 30.6 percent in terms of annual value and from 0.01 percent to 10.6 percent in volume. Few vessels relied exclusively on the Outer Cape Area for lobster fishing revenue. Using statistical area 521 as a proxy for the Outer Cape during the 2005–2007 period, dependence on lobster in value ranged from 0.01 percent to 19.4 percent, averaging 1.4 percent of overall value. In volume, lobster harvested from area 521 ranged from 0.002 percent to 5.7 percent, averaging 0.4 percent of overall volume. The maximum expected annual economic impact of the 6-inch (17.15-cm) maximum size in the Outer Cape Area on non-trap vessels is estimated to be about \$1,000, while the median annual impact was estimated to be \$117 per vessel. These values are reflective of the relatively low dependence on the Outer Cape Area for lobster fishing revenue and the low encounter rate suggested by observer data of lobsters above the 6-inch (17.15 cm) proposed maximum size. In terms of total fishing

revenue these estimated revenue impacts represent between 0.01 percent and 1.2 percent of total fishing revenue for participating regulated non-trap gear small entities.

The added economic impact of the change in v-notch definition across all areas is highly uncertain. Although this change would result in an unknown level of reduced opportunities to retain legal lobsters it seems likely that this additional impact would have less impact on non-trap than trap vessels since non-trap vessels earn only a portion of total fishing revenue from lobsters. The added effect on trap vessels is difficult to assess, but would reduce potential revenue in addition to that which may be associated with either changes in existing maximum size or implementation of new maximum size regulations. Available sea sampling data from the Commonwealth of Massachusetts indicate that between 2 percent and 4 percent of females encountered in the Outer Cape Area were v-notched. A substantial portion of the Outer Cape Area legal harvest is comprised of females (64 percent), an unknown proportion of which would be illegal under the preferred alternative.

Economic Impacts of Non-Preferred Alternatives to the Proposed Action

Mandatory Federal Dealer Electronic Reporting

NMFS analyzed two alternatives in addition to the proposed alternative for this action: a no action alternative and a one-year delay in the implementation of mandatory lobster dealer electronic reporting. With the no action alternative, there would be no expected economic impacts to Federal lobster dealers. Those who are not required to report under the current Federal requirements would not be required to report lobster purchases to NMFS and would not suffer any associated economic impacts. Specifically, 148 Federal lobster dealers would not be required to submit electronic trip-level reports to NMFS on a weekly basis. This could impede the availability of an up-to-date, comprehensive data set of trip-level lobster landings from Federal dealers on a coastwide basis. NMFS believes that the optimal situation from a fishery monitoring and data management perspective would be one wherein all Federal dealers report electronically to NMFS, making this trip-level data available in a single format on a weekly basis.

If the one-year delay in implementation is selected, this alternative would provide some

temporary relief to affected regulated entities, but would only put off the cost of coming into compliance with the proposed action for one year. Consistent with the proposed action, it would allow for the receipt of all trip-level lobster data by all Federal lobster dealers in a consistent and more timely fashion. However, it would allow the industry more time to comply with the requirements. It would postpone the start-up and maintenance costs associated with the purchase of a computer (\$580) in cases where the dealer does not currently own one, and would postpone the costs of Internet service (\$652 per year), as applicable.

Maximum Carapace Length Measures

As with the dealer reporting requirement, NMFS analyzed a no action alternative and the Commission's alternative in addition to the proposed alternative selected for this rulemaking action. Essentially, all Federal permit holders possess either a landing permit or lobster fishing license from a state of landing. Under the Federal lobster regulations (50 CFR part 697), Federal lobster vessels are subject to the most restrictive of either state or Federal regulations, regardless of where the vessels fish. Therefore, in the absence of Federal rules that mirror revised state regulations based on the Commission's plan, Federal vessels will be held to the new state regulations for the respective lobster management areas, even if fishing in Federal waters. So, the impact is, theoretically, the same to Federal vessels and to the resource, regardless of whether the no action alternative or the Commission's alternative is selected, assuming that states remain in compliance with the ISFMP. However, in choosing the no action alternative, differences in the state and Federal regulations across multiple management areas could cause some confusion among the industry and managers and may inhibit effective enforcement of fisheries regulations. This could occur since, without complementary Federal action, nearly all the lobster management areas within the scope of this action would have inconsistent Federal and state maximum size requirements within each area. Conversely, implementation of the Commission recommendations, the second alternative that NMFS analyzed and has rejected in favor of the proposed measures, would negate any inconsistencies between state and Federal regulations. With the Commission's alternative, the industry would not be impacted since they are already complying with these measures under state law. Under either of these

rejected alternatives, Outer Cape lobster vessels would not be impacted and could, with some exceptions, harvest lobster in the Outer Cape Area without regard to maximum carapace lengths.

Revision to V-notch Definition

The consequences associated with the Federal implementation of the v-notch definition as recommended in the Commission's alternative and set forth in the respective state regulations are the same, in most respects, as no Federal action. The measures adopted by the states would impact the Federal permit holders since they are more restrictive than the current Federal regulations. Implementing these measures at the Federal level would not subject Federal lobster vessels to any further economic burden since they would already be subject to these restrictions by standing state laws in the absence of Federal action. However, there are benefits to Federal action in implementing the Commission's recommended measures compared to the no action alternative because consistent state and Federal regulations would limit confusion as to the enforceable standards among jurisdictions and management areas and would facilitate the enforcement of these measures and foster their utility in augmenting egg production through broodstock protection. Therefore, on balance, the Commission's alternative would provide additional benefits to industry participants and would allow for more effective enforcement than the no-action alternative.

Socio-economic impacts would not be expected by choosing to maintain the current Federal v-notching standards or by implementing the Commission's recommendations which would not include a revised v-notch for the Outer Cape Area. Federal vessels will be subject to the more restrictive v-notch measures in place at the state level even if NMFS maintains the status quo. Outer Cape lobster fishers would not be impacted by a more restrictive v-notch under either non-preferred alternative and could continue to harvest lobster under the current 1/4-inch (0.64-cm) v-notch requirement, while vessels in other management areas would remain subject to the stricter 1/8-inch (0.32-cm) v-notch standard.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: October 1, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.2(a), the definition for "Standard v-shaped notch" is revised to read as follows:

§ 697.2 Definitions.

(a) * * *

* * * * *

Standard V-shaped notch means a straight-sided triangular cut, with or without setal hairs, at least 1/8 inch (0.32 cm) in depth and tapering to a point.

* * * * *

3. In § 697.6, paragraphs (n) through (s) are added to read as follows:

§ 697.6 Dealer permits.

* * * * *

(n) *Lobster dealer recordkeeping and reporting requirements*—(1) *Detailed report.* All Federally-permitted lobster dealers must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for commercial purposes, other than solely for transport on land, within the time periods specified in paragraph (q) of this section, or as specified in § 648.7(f) of this chapter, whichever is most restrictive, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a Federal lobster dealer permit under this part must provide the following information, as well as any additional information as applicable under § 648.7(a)(1)(i) of this chapter: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under part 648 of this chapter with a mandatory vessel trip

reporting requirement; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable); port landed; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2 of this chapter, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part (American lobster), and part 648 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by the provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(2) *System requirements.* All persons required to submit reports under paragraph (n)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal lobster dealer permit holders.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator: All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(o) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Administrator to make such inspections, must make immediately available for inspection copies of the required reports and the records upon which the reports are or will be based.

(p) *Record retention.* Records upon which trip-level reports are based must be retained and be available for immediate review for a total of 3 years after the date of the last entry on the report. Dealers must retain the required records at their principal place of business.

(q) *Submitting dealer reports.* (1) Detailed dealer reports required by paragraph (n)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (n)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(2) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(3) Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(4) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

(r) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee or the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

(s) *Additional dealer reporting requirements.* (1) All persons issued a lobster dealer permit under this part are subject to the reporting requirements set forth in paragraph (n) of this section, as well as §§ 648.6 and 648.7 of this chapter, whichever is most restrictive.

(2) [Reserved]

4. In § 697.20, paragraphs (b)(3) through (b)(7), and paragraph (g)(3) are revised, and paragraph (b)(8) is added, to read as follows:

§ 697.20 Size, harvesting and landing requirements.

* * * * *

(b) * * *

(3) Effective July 1, 2009, the maximum carapace length for all American lobster harvested in or from one or more of the EEZ Nearshore Management Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(4) Effective July 1, 2009, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in one or more of EEZ Nearshore Management

Areas 2, 4, 5, and 6 is 5¼ inches (13.34 cm).

(5) Effective July 1, 2009, the maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6⅞ inches (17.46 cm).

(6) Effective July 1, 2009, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6⅞ inches (17.46 cm).

(7) Effective July 1, 2010, the maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(8) Effective July 1, 2010, the maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

* * * * *

(g) * * *

(3) No person may possess any female lobster possessing a standard v-shaped notch harvested in or from the EEZ Nearshore Management Area 2, 4, 5, 6, and the Outer Cape Lobster Management Area or the EEZ Offshore Management Area 3.

* * * * *

[FR Doc. E8-23568 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 73, No. 194

Monday, October 6, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, October 23, 2008 at the Okanogan-Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting Provincial Advisory Committee members will share information on new developments relating to the Northwest Forest Plan, receive an update on the Access Travel Management Plan and the Recreation Facilities Analysis Master Plan, and offer input on the future role of the Provincial Advisory Committee. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Becki Heath, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509-664-9200.

Dated: September 29, 2008.

Rebecca Lockett Heath,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. E8-23406 Filed 10-3-08; 8:45 am]

BILLING CODE 3410-11-M

ARCHITECT OF THE CAPITOL

Notice of Proposed Small Business Set-Aside Program

AGENCY: Architect of the Capitol.

SUMMARY: The Architect of the Capitol invites comments on the proposed small business set-aside program for use with small purchases awarded by the Architect of the Capitol.

DATES: Interested persons are invited to submit comments on or before November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Lisa Russell (Procurement Division), 202-226-1407, e-mail: smallbusiness@aoc.gov.

Authority: 2 U.S.C. 1821 and 41 U.S.C. 5, 41 U.S.C. 6a-1.

SUPPLEMENTARY INFORMATION: The AOC is interested in adopting a small business set-aside program that includes many of the procedural principles contained in the Small Business Act and as implemented in 13 CFR Part 121, 13 CFR Part 124, 13 CFR Part 125, 13 CFR Part 126, and 13 CFR Part 134. This program is proposed for use in conjunction with the AOC's existing procurement authority for small purchases.

The AOC is not subject to the Administrative Procedure Act, however, the AOC Procurement Division seeks to solicit public comment on the new proposed program.

The AOC's threshold for small purchases is \$100,000. The AOC is considering whether to limit each acquisition of supplies or services that has an anticipated dollar value greater than \$5,000 but not exceeding \$100,000 to small business concerns. Purchases less than \$100,000 is one of the exceptions to the AOC's full and open competition requirement as noted under its procurement statute 41 U.S.C. 5 and as revised by 41 U.S.C. 6a-1 and 2 U.S.C. 1821. The AOC's policy for purchases of \$5,000 and less is to treat them in the same manner as micro-purchases in accordance with FAR Part 13.2. We believe this contemplated policy to limit each acquisition of supplies or services that has an anticipated dollar value greater than \$5,000 but not exceeding \$100,000 to

small business concerns is also consistent with the policies and procedures of FAR Part 13, and this policy may adopt or incorporate those FAR Part 13 policies and procedures as appropriate. We also will apply this policy only when there is reasonable expectation that offers will be received from a least two responsible small business concerns.

Adoption of any existing procedure should not infer application of the Small Business Act, Administrative Procedure Act, nor any of its implementing regulations upon the AOC. The draft policies are available on <http://www.aoc.gov/osdbu.cfm>. Comments on the policies should be directed to Lisa Russell at facsimile 202-225-3221 or e-mail smallbusiness@aoc.gov.

Stephen T. Ayers,

Acting Architect of the Capitol.

[FR Doc. E8-23496 Filed 10-3-08; 8:45 am]

BILLING CODE 1182-00-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT
[9/1/2008 through 9/30/2008]

Firm	Address	Date accepted for filing	Products
Reata Engineering & Machine Works.	7822 South Wheeling , Englewood, CO 80112.	9/19/2008	Precision machined parts and components, with specialization in machine parts, special dies, machine tools, jigs and fixtures.
Meta-Lite, Inc.	93 Entin Road, Clifton, NJ 07014.	9/19/2008	Toll Booths, gates, rails, stairs, elevator enclosures, jail cells.
Karthauser & Sons, Inc	W147 N11100 Fond Du, Germantown, WI 53022.	9/19/2008	Cut flowers, potted plants and floral supplies.
Eckman Lumber Company d.b.a. Eckman Building.	1280 Main Road, Lehighton, PA 18235.	9/19/2008	Roof and floor trusses.
Troutman Chair Company, LLC.	134 Rocker Lane, Troutman, NC 28166.	9/29/2008	Rocking chairs, chairs and stools.
The Fountainhead Group, Inc	23 Garden Street, New York, NY 13147.	9/17/2008	Fire pumps, lawn and garden sprayers and foggers.
Wolfe Tool and Machine Co ...	210 Lafayette Street, PO, York, PA 17405.	9/30/2008	General job shop; pump housing; miscellaneous shafts, fixtures; weldments; frames; mold tooling; axle shafts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 30, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8-23535 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-918]

Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing an antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC"). On September 29, 2008, the ITC notified the

Department of its affirmative determination of material injury to a U.S. industry. *See Steel Wire Garment Hangers from China* (Investigation No. 731-TA-1123 (Final), USITC Publication 4034, (September 2008))

EFFECTIVE DATE: October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, 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) 482-1394.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("the Act"), the Department published the final determination and amended final determination of sales at less than fair value ("LTFV") in the antidumping investigation of steel wire garment hangers from the People's Republic of China ("PRC"). *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) ("*Final Determination*"); *Steel Wire Garment Hangers from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 53188 (September 15, 2008) ("*Amended Final Determination*").

Scope of the Order

The merchandise that is subject to this investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not

fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of this investigation are wooden, plastic, and other garment hangers that are not made of steel wire. The products subject to this investigation are currently classified under HTSUS subheading 7326.20.0020 and 7323.99.9060.

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

Antidumping Duty Order

On September 29, 2008, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of certain steel nails from the PRC. These antidumping duties will be assessed on all unliquidated entries of steel wire garment hangers from the PRC entered, or withdrawn from the warehouse, for consumption on or after March 25, 2008, the date on which the Department published its *Preliminary*

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

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. See section 735(c)(3) of the Act. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

STEEL WIRE GARMENT HANGERS FROM THE PRC – AMENDED DUMPING MARGINS

Exporter & Producer	Weighted-Average Deposit Rate
Shanghai Wells Hanger Co., Ltd. Shaoxing Metal Companies:	15.83 %
Shaoxing Gangyuan Metal Manufactured Co., Ltd.	94.78 %
Shaoxing Andrew Metal Manufactured Co., Ltd.	
Shaoxing Tongzhou Metal Manufactured Co., Ltd.	
Company "X"	
Jiangyin Hongji Metal Products Co., Ltd.	55.31 %
Shaoxing Meideli Metal Hanger Co., Ltd.	55.31 %
Shaoxing Dingli Metal Clotheshorse Co., Ltd.	55.31 %
Shaoxing Liangbao Metal Manufactured Co. Ltd.	55.31 %
Shaoxing Zhongbao Metal Manufactured Co. Ltd.	55.31 %
Shangyu Baoxiang Metal Manufactured Co. Ltd.	55.31 %
Zhejiang Lucky Cloud Hanger Co., Ltd.	55.31 %
Pu Jiang County Command Metal Products Co., Ltd.	55.31 %
Shaoxing Shunji Metal Clotheshorse Co., Ltd.	55.31 %
Ningbo Dasheng Hanger Ind. Co., Ltd.	55.31 %
Jiaxing Boyi Medical Device Co., Ltd.	55.31 %
Yiwu Ao-Si Metal Products Co., Ltd.	55.31 %
Shaoxing Guochao Metallic Products Co., Ltd.	55.31 %
PRC-Wide Rate ¹	187.25 %

¹The PRC-Wide entity includes Tianjin Hongtong Metal Manufacture Co. Ltd.

This notice constitutes the antidumping duty order with respect to steel wire garment hangers from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the

Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR351.211.

Dated: September 29, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-23569 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC), Request for Nominations

AGENCY: International Trade Administration, Trade Development.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was established pursuant to provisions under Title IV of the Jobs Through Trade Expansion Act, 22 U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App. 2. ETTAC was first chartered on May 31, 1994. ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee (TPCC), reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC. ETTAC advises on the development and administration of policies and programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

Membership in a committee operating under the Federal Advisory Committee Act must be balanced in terms of economic subsector, geographic location, and company size. Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector of the U.S. environmental industry. We are seeking senior executive-level company or environmental technologies association candidates. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services including:

- (1) Air Pollution Control/Monitoring Equipment.
- (2) Analytic Services.
- (3) Environmental Energy Sources.

(4) Environmental Engineering and Consulting Services.

(5) Financial Services.

(6) Process and Prevention Technologies.

(7) Solid and Hazardous Waste Equipment and Management.

(8) Water and Wastewater Equipment and Services.

The Secretary of Commerce invites nominations to ETTAC of U.S. citizens who will represent U.S. environmental goods and services companies that trade internationally, or trade associations whose members include U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies in general do not qualify for representation on the committee.

Nominees will be considered based upon their ability to carry out the goals of ETTAC's enabling legislation as further articulated in its charter. ETTAC's Charter is available on the Internet at <http://www.environment.ita.doc.gov>.

Priority will be given to a balanced representation in terms of point of view represented by various sectors, product lines, firm sizes, and geographic areas.

Appointments are made without regard to political affiliation.

Nominees must be U.S. citizens, representing U.S. environmental goods and services firms that trade internationally or provide services in direct support of the international trading activities of other entities.

Self-nominations are accepted. If you are interested in nominating someone to become a member of ETTAC, please provide the following information (2 pages maximum):

- (1) Name.
- (2) Title.
- (3) Work Phone; Fax; and, E-mail Address.
- (4) Company or Trade Association Name and Address including Web site Address.

(5) Short Bio of nominee including credentials and proof of U.S. citizenship, and a list of citizenships to countries other than the U.S.

(6) Brief description of the company or trade association and its business activities; company size (number of employees and annual sales); and export markets served.

Please, do not send company or trade association brochures or any other information.

This information may be e-mailed to marc.lemmond@mail.doc.gov or faxed to the attention of Marc Lemmond at 202-482-5665, and must be received before the deadline. Nominees selected to ETTAC will be notified.

Deadline: This request will be open until October 24, from the date of publication in the **Federal Register**.
FOR FURTHER INFORMATION CONTACT: Marc Lemmond, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; phone 202-482-3889; fax 202-482-5665; e-mail Marc.lemmond@mail.doc.gov.

Dated: September 30, 2008.

Rachel Halpern,

Acting Director, Office of Energy and Environmental Industries.

[FR Doc. E8-23525 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-890]

Wooden Bedroom Furniture From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews

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

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4474.

Background

The Department of Commerce ("the Department") published an antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC") on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). On March 7, 2008, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of WBF from the PRC and new shipper reviews for the period January 1, 2007 through December 31, 2007. *See Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China*, 73 FR 12387 (March 7, 2008) and *Wooden Bedroom Furniture from the People's Republic of*

China: Initiation of New Shipper Reviews, 73 FR 12392 (March 7, 2008).

On August 22, 2008, the Department aligned the deadlines and the time limits of the new shipper reviews of WBF with the 2007 administrative review of WBF. *See Memorandum to the File "Wooden Bedroom Furniture from the People's Republic of China: Alignment of the 1/1/2007-12/31/2007 Annual Administrative Review and the 1/1/2007-12/31/2007 New Shipper Review,"* dated August 22, 2008. The preliminary results of these reviews are currently due no later than October 2, 2008.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days. Completion of the preliminary results of these reviews within the 245-day period is not practicable because the Department needs additional time to analyze information pertaining to the respondents' sales practices, factors of production, and corporate relationships, and to issue and review responses to supplemental questionnaires.

Because it is not practicable to complete these reviews within the time specified under the Act, we are fully extending the time period for issuing the preliminary results of review to 365 days until January 30, 2009, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: September 29, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8-23566 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review

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

SUMMARY: On April 4, 2008, the Department ("the Department") published the preliminary results of the second administrative review of the antidumping duty order on certain tissue paper products ("tissue paper") from the People's Republic of China ("PRC"). *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 (April 4, 2008) ("*Preliminary Results*"). We gave interested parties an opportunity to comment on the *Preliminary Results*. Based on our analysis of the comments received, we have made changes to the surrogate value for labor for the final results. We find that Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune), has not sold subject merchandise at less than normal value during the period of review ("POR"), March 1, 2006, through February 28, 2007.

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, 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) 482-6905.

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary results of the second administrative review on April 4, 2008, in the **Federal Register**. *See Preliminary Results*. On May 5, 2008, Seaman Paper Company of Massachusetts ("Petitioner") and Max Fortune filed their case briefs. On May 12, 2008, Petitioner and Max Fortune filed rebuttal briefs. On June 30, 2008, the Department placed import entry packages obtained from U.S. Customs and Border Protection ("CBP") on the record of this administrative review. The Department did not receive any comments regarding the CBP entry

packages. On July 14, 2008, the Department extended the final results of this administrative review. *See Certain Tissue Paper Products from the People's Republic of China: Notice of Extension of Time Limit for Final Results of Second Antidumping Duty Administrative Review*, 73 FR 40295 (July 14, 2008). No parties requested a hearing.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Memorandum to David M. Spooner, Assistant Secretary for Import Administration, regarding Issues and Decision Memorandum for the Final Results in the Second Administrative Review of Certain Tissue Paper Products from the People's Republic of China, dated October 1, 2008 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/release/release.html>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Antidumping Duty Order

The tissue paper products subject to this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the

Harmonized Tariff Schedule of the United States ("HTSUS"). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to: (1) Samsam Production Limited, (2) Guangzhou Baxi Printing Products Limited, (3) Guilin Samsam Paper Products Ltd., (4) Vietnam Quijiang Paper Co., Ltd., (5) PT Grafitecindo Ciptaprima, (6) PT Printec Perkasa, (7) PT Printec Perkasa II, (8) PT Sansico Utama, (9) Foshan Sansico Co., Ltd., and (10) Sansico Asia Pacific Limited. Each of these companies certified that they did not export subject tissue paper from the PRC to the United States during the POR, which the Department corroborated by reviewing PRC tissue paper import data maintained by CBP, and found no discrepancies with the statements made by these companies. *See Preliminary Results*, 73 FR at 18499. Additionally, consistent with the Tariff Act of 1930, as amended ("the Act") and Department practice, we also preliminarily rescinded the review with respect to Guilin Qifeng Paper Co., Ltd. ("Guilin Qifeng") because the record showed no suspended entries of merchandise exported by Guilin Qifeng during the POR. *See Preliminary Results*, 73 FR at 18500.

Subsequent to the *Preliminary Results*, no information was submitted on the record indicating that the above

companies made shipments to the United States of subject merchandise during the POR. Thus, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review with respect to Samsam Production Limited, Guangzhou Baxi Printing Products Limited, Guilin Samsam Paper Products Ltd., Vietnam Quijiang Paper Co., Ltd., PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, PT Sansico Utama, Foshan Sansico Co., Ltd., and Sansico Asia Pacific Limited. Additionally, the Department is rescinding the review with respect to Guilin Qifeng as no information was submitted on the record challenging our preliminary intent to rescind the review for this company.

Separate Rates

Max Fortune requested a separate, company-specific antidumping duty rate. In the *Preliminary Results*, we found that Max Fortune met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 73 FR at 18500. The Department did not receive comments on this issue prior to these final results. Moreover, we have not received any information since the *Preliminary Results* with respect to Max Fortune that would warrant reconsideration of our separate-rates determination. Therefore, we continue to assign an individual dumping margin to Max Fortune for this review period.

Changes Since the Preliminary Results

Based on comments received from the interested parties, we have revised the labor surrogate value used in Max Fortune's margin calculation. For the final results, we will continue to use regression-based wage data, but will use U.S. \$1.04 as the revised wage for the PRC in the final results, which continues to be based on the reported experience of several countries, but applies the more recent 2007 calculations, based on 2005 wage rate data, as published by the Department in May 2008. *See Issues and Decision Memorandum*, at Comment 4.

Use of Facts Available

Sections 776(a)(1) and 776(a)(2)(B) of the Act direct the Department to use facts available if necessary information is not available on the record of an antidumping proceeding. We determined in the *Preliminary Results* that, pursuant to sections 776(a) and 782(d) of the Act, Max Fortune did not provide certain information relevant to the Department's analysis because it failed to report ink and dye

consumption on a color-specific basis. Max Fortune stated it does not maintain records for dye and ink consumption in the papermaking and paper printing stages of production on a color specific basis. Thus, Max Fortune could not report ink and dye consumption data in a manner requested by the Department. As a result, we determined that it was necessary to apply facts otherwise available to Max Fortune. Petitioner argues that we should apply an adverse inference, pursuant to section 776(b) of the Act, to Max Fortune's calculation. However, we have concluded that Max Fortune acted to the best of its ability in providing responses to the Department's questionnaires. Thus, consistent with the Department's application in the previous segment of the instant review and in the *Preliminary Results*, we will not apply an adverse inference, but will continue to apply the average Indian import values for three dye types, which are commonly used in the production of tissue paper, to value the aggregate amount of dye consumed in the production of the subject tissue paper. See Issues and Decision Memorandum at Comment 1 for a detailed analysis.

Additionally, in the *Preliminary Results*, the Department invited comments from interested parties regarding whether or not it should alter its requirements for reporting ink and dye consumption in future segments. See *Preliminary Results*, 73 FR at 18501. Upon analyzing the comments received from interested parties with respect to the reporting requirement for ink and dye consumption on a CONNUM-specific basis, we have determined that the record does not contain sufficient evidence necessary to revise the model-match criteria. Therefore, we will not make any changes, at this time, to the model-match criteria and continue to require that companies in future segments report ink and dye consumption on a CONNUM-specific basis. See Issues and Decision Memorandum at Comment 2, for a detailed analysis.

Final Results of Review

We determine that the following antidumping duty margin exists:

CERTAIN TISSUE PAPER FROM THE
PRC INDIVIDUALLY REVIEWED EX-
PORTERS

Max Fortune Industrial Ltd	0.00%
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The Department will disclose calculations performed for these final results to the parties within five days of

the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

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

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Max Fortune, the Department has calculated a zero margin for these final results, and therefore no cash deposit will be required for this company; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including those companies for which this review has been rescinded, the cash deposit rate will be the PRC-wide rate of 112.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

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

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I

General Issues

- Comment 1: Reporting of Ink and Dye Consumption
- Comment 2: Reporting Requirements for Ink and Dye
- Comment 3: Steam Coal Surrogate Value
- Comment 4: Labor Surrogate Value
- Comment 5: Treatment of Negative Dumping Margins ("Zeroing")

[FR Doc. E8-23588 Filed 10-3-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-848)

Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part

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

SUMMARY: In response to timely requests from one exporter and the petitioner,¹ the Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The period of review (POR) is September 1, 2006, through August 31, 2007.

¹ The petitioner is the Crawfish Processors Alliance (CPA).

We have preliminarily determined that sales have not been made below normal value by the exporter participating in the administrative review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise exported by Yancheng Hi-King Agriculture Developing Co., Ltd., during the POR without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 and (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1997, the Department published an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 48218 (September 15, 1997). On September 4, 2007, the Department published a notice of opportunity to request an administrative review of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 50657 (September 4, 2007).

On September 28, 2007, Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou), an exporter and producer of crawfish tail meat in the PRC, requested an administrative review. On October 1, 2007, the petitioner requested an administrative review of the following 10 exporters and/or producers: Anhui Tongxin Aquatic Product & Food Co., Ltd. (Anhui); China Kingdom Import & Export Co., Ltd.² (China Kingdom); Jingdezhen Garay Foods Co., Ltd. (Jingdezhen); Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (Aquatic

Foods); Qingdao Zhengri Seafood Co., Ltd. (Qingdao Seafood); Shanghai Now Again International Trading Co., Ltd. (Shanghai Now Again); Xiping Opeck Food Co., Ltd. (Xiping Opeck); Xuzhou; Yancheng Hi-King Agriculture Developing Co., Ltd. (Hi-King); Yancheng Yao Seafood Co., Ltd. (Yancheng Seafood). On October 17, 2007, the CPA withdrew its requests for administrative reviews for China Kingdom, Aquatic Foods, Qingdao Seafood, and Yancheng Seafood.

On October 31, 2007, based on timely requests for an administrative review, the Department published a notice of initiation of an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007). The review was initiated with respect to Anhui, Jingdezhen, Shanghai Now Again, Xiping Opeck, Xuzhou, and Hi-King.³

The Department extended the deadline for the preliminary results of this review from June 1, 2008, to September 29, 2008. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 32289 (June 6, 2008), and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 43913 (July 29, 2008).

The POR is September 1, 2006, through August 31, 2007. We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently

classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Intent to Rescind Review in Part

Record evidence indicates that Shanghai Now Again and Xiping Opeck did not have any exports of subject merchandise during the POR. See the December 12, 2007, submission of Shanghai Now Again and Xiping Opeck. Moreover, we have reviewed the CBP entry data for the POR and found no evidence of exports from these two entities. See Memorandum to File entitled "Placement of Certain Import Data from the U.S. Customs and Border Protection Automated Commercial System on the Record of the Administrative Review," dated July 9, 2008. Additionally, on February 12, 2008, we made a no-shipments inquiry to CBP, requesting that, if any CBP import office has contrary information, appraising officers should report this information within 10 days of receipt of the message. To date, we have not received any evidence that these two entities had any shipments to the United States of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind this review in part with respect to Shanghai Now Again and Xiping Opeck.

Duty Absorption

Section 751(a)(4) of the Act states that, during any administrative review initiated two or four years after the publication of an antidumping duty order under section 736(a) of the Act, if requested, the administering authority shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Additionally, section 351.213(j)(1) of the Department's regulations states that, during any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of a determination under 19 CFR 351.218(d) (sunset review), if requested by a

² This company is also known as China Kingdom Import & Export Co., Ltd., and Zhongda Import and Export Co. Ltd. per the October 1, 2007, submission of the CPA.

³ On July 23, 2008, the Department rescinded this review with respect to Anhui, Jingdezhen, and Xuzhou in accordance with 19 CFR 351.213(d)(1). See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 42771 (July 23, 2008).

domestic interested party within 30 days of the date of publication of the notice of initiation of the review, the Secretary will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer.

In a letter dated November 29, 2007, the petitioner requested that the Department conduct a duty-absorption review of Jingdezhen, Shanghai Now Again, Xiping Opeck, Anhui, Xuzhou, and Hi-King. As stated above, we have rescinded or are announcing our intent to rescind in part the review with respect to Jingdezhen, Shanghai Now Again, Xiping Opeck, Anhui, and Xuzhou. Thus, we will not make a duty-absorption determination with respect to these companies.

With respect to Hi-King, we find that, although the instant review was not initiated two or four years after the date of publication of the antidumping duty order, part of this administrative review falls between the third and fourth anniversary of the publication of a determination under 19 CFR 351.218(d) (sunset review). See *Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 67 FR 72645 (December 6, 2002). There is no record evidence indicating that the sole remaining respondent in this review, Hi-King, sold subject merchandise in the United States through an affiliated importer. Thus, according to section 751(a)(4) of the Act and for the reason stated above, we have not investigated whether Hi-King absorbed duties.

Non-Market-Economy Country Status

The Department considers the PRC to be a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, in these preliminary results of review, we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

In antidumping proceedings involving NME countries, pursuant to section

773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOP). In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department uses, to the extent possible, the prices or costs of FOP in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and which are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries that are at a level of economic development comparable to that of the PRC.⁴ While none of these countries is a significant producer of freshwater crawfish tail meat,⁵ India does have a seafood-processing industry that is comparable to the crawfish industry with respect to factory overhead, selling, general, and administrative (SG&A) expenses, and profit. Therefore, we have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish scrap shell. Because India does not have a fresh-crawfish industry (although it has a sea crawfish industry) and we have determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for live crawfish, we have valued live crawfish using the data submitted by the CPA and the Louisiana Department of Agriculture and Forestry, which was obtained from the same source that was used to value live crawfish in several previous segments of this proceeding.⁶ Both parties submitted

⁴ See Memorandum to Howard Smith from Carole Showers entitled "Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China: Request for a List of Surrogate Countries," dated January 15, 2008.

⁵ See Memorandum to Laurie Parkhill, Office Director, AD/CVD Enforcement 5, entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated September 29, 2008 (Surrogate-Country Memorandum).

⁶ See the March 7, 2008, submission by the CPA regarding Freshwater Crawfish Tail Meat from the PRC: Surrogate Value Data. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews*, 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of the 2005-2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008)). For an example of a previous segment of the proceeding where this source was used, see *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006*

data on imports of live crawfish from Portugal into Spain as reported by *Agencia Tributaria*, the Spanish government agency response for trade statistics. Spain is a significant producer of comparable merchandise, *i.e.*, whole processed crawfish, and there are publicly available import statistics for Spain that are contemporaneous with the POR.⁷

We have selected Indonesia as a secondary surrogate country for purposes of valuing the crawfish shell by-product because there are no appropriate Indian surrogate values for crawfish shell by-product on the record of this review. We find that Indonesia is at a level of economic development comparable to the PRC, it has significant production of dried crab and shrimp shells, merchandise comparable to the shell by-product, and has publicly available data, *i.e.*, a public price quote from an Indonesian company that has been used in prior segments of this proceeding.⁸ No other parties commented on the selection of surrogate values.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and

Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews, 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of the 2005-2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008)).

⁷ See Surrogate-Country Memorandum.

⁸ See Memorandum to Barbara E. Tillman from Christian Hughes and Adina Teodorescu through Maureen Flannery re: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China. Administrative Review 9/1/00-8/31/01 and New Shipper Reviews 9/1/00-8/31/01 and 9/1/00-10/15/01 (August 5, 2002), which was placed on the record of this review.

Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is used to determine whether an exporter and/or producer is independent from government control and does not consider, in general, macroeconomic/ border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998) (*Mushrooms*). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Mushrooms*, 63 FR at 72256 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997)).

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589. Hi-King stated that it is an independent legal entity and provided copies of its business license, which allows the company to engage in the exportation of freshwater crawfish tail meat. See the December 21, 2007, submission by Hi-King at 7. Hi-King also reported that no export quotas apply to crawfish. See the December 21, 2007, submission by Hi-King at 2-3, 5, and Exhibit A-6. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. See *Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) (unchanged in *Freshwater Crawfish Tail*

Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999)).

In addition, we have confirmed previously that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. See *Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543, 8544 (February 22, 1999) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999)). We found no evidence of *de jure* governmental control over Hi-King's exportation of freshwater crawfish tail meat.

Moreover, the Department has found previously that the *Company Law of the People's Republic of China*, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews*, 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of the 2005-2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008)). Additionally, certain laws which were placed on the record of this review also indicate a lack of *de jure* government control. Hi-King provided copies of the *PRC's Enterprise Legal Person Registration Administrative Regulations*, which allows companies with a business license to make deals, enter into contracts, open bank accounts, and conduct business activities. See the December 21, 2007, submission by Hi-King at 3, 5-6, and Exhibit A-3. Hi-King also submitted copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade, grants autonomy to foreign-trade operators in management decisions and establishes the foreign trade operator's

accountability for profits and losses. See the December 21, 2007, submission by Hi-King at 4 and Exhibit A-5. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Hi-King.

Absence of De Facto Control

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

Hi-King has asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Based upon the record information, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Hi-King. Given that the Department has found that Hi-King operates free of *de jure* and *de facto* governmental control, it has preliminarily determined that Hi-King has satisfied the criteria for a separate rate.

U.S. Price

In accordance with section 772(a) of the Act, we based Hi-King's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. In accordance with section 772(c) of the Act, we

calculated export price by deducting, where applicable, foreign inland freight expenses and foreign brokerage and handling expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services (see the "Normal Value" section of this notice for further details).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)). Thus, we calculated normal value by adding together the value of the FOP, general expenses, profit, and packing costs.⁹ Specifically, we valued material, labor, energy, and packing by multiplying the amount of the factor consumed in producing the subject merchandise by the average unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp. v. United*

States, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOP for surrogate general expenses and profit. See Memorandum to the File, entitled "2006–2007 Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Valuation," dated September 29, 2008 (Factor-Value Memorandum).

Surrogate Values

In selecting surrogate values, we followed, to the extent practicable, our practice of choosing publicly available values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998). Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated the surrogate values using, where appropriate, the Indian Wholesale Price Index (Indian WPI) and the Indonesian Wholesale Price Index (Indonesian WPI) as published in the *International Financial Statistics* of the International Monetary Fund. See Memorandum to the File entitled "Fresh Crawfish Tail Meat from the People's Republic of China: Surrogate-Value Memorandum," dated September 29, 2008 (Surrogate-Value Memo).

In calculating surrogate values from import statistics and in accordance with our practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand). See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's*

Republic of China, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. See also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004)). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued coal and packing materials using September 2006–August 2007 weighted-average Indian import values derived from the *World Trade Atlas* online (WTA). The Indian import statistics that we obtained from the WTA were published by the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce of India, and are contemporaneous with the POR. We valued whole live crawfish using the publicly available data for Spanish imports of whole live crawfish from Portugal submitted by the CPA and the Louisiana Department of Agriculture and Forestry. We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because this source includes a wide range of industrial water tariffs. Specifically, this source provides 386 industrial water rates within the Maharashtra province from June 2003 (193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category). We inflated the surrogate value for water using the Indian WPI to make it contemporaneous with the POR. We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These

⁹ We based the values of the FOPs on surrogate values (see "Selected Surrogate Values" section below).

electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Because the electricity rates are not contemporaneous with the POR, we inflated the values using Indian WPI to make it contemporaneous with the POR.

We valued non-refrigerated truck freight expenses using a per-unit average rate calculated from data on the following website: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this website contains inland freight truck rates between many large Indian cities. We valued refrigerated-truck freight expenses based on price quotations for April 2004 from CTC Freight Carriers of Delhi, India, placed on the record of the antidumping investigation of certain frozen warm-water shrimp from the PRC. As the values for both non-refrigerated and refrigerated truck freight expenses are not contemporaneous with the POR, we inflated/deflated, as appropriate, these surrogate values using the Indian WPI. To value brokerage and handling, we used publicly summarized versions of the average values for brokerage and handling expenses reported in the following sources: Agro Dutch Industries Ltd.'s (Agro Dutch's) May 25, 2005, Section C submission (taken from the 2004–2005 administrative review of the antidumping duty order on preserved mushrooms from India); Kejriwal Paper Ltd.'s (Kejriwal's) January 9, 2006, Section C submission (taken from the antidumping investigation of certain lined paper from India); Essar Steel Ltd.'s (Essar's) February 28, 2005, Section C submission (taken from the 2003–2004 administrative review of the antidumping duty order on carbon steel flat products from India). See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and *Certain hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR

2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006)). Because data reported by Agro Dutch, Kejriwal, and Essar were not contemporaneous with the POR, we inflated the surrogate value for domestic brokerage and handling expenses using the Indian WPI. See Surrogate-Value Memo for further details on the surrogate values we used for these preliminary results.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor using the most recently calculated regression-based wage rate which relies on 2004 data. This wage rate can currently be found on the Department's website on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, available at <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's website is the Yearbook of Labour Statistics, ILO, Chapter 5B: Wages in Manufacturing. We applied the same wage rate to all skill levels and types of labor reported by Hi-King because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor.

We valued SG&A expenses, factory overhead costs, and profit using the 2002–2003 financial statements of Nekkanti Sea Foods Ltd., an Indian seafood processor. See Factor-Value Memorandum.

Currency Conversion

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

Treatment of Affiliated Parties as a Single Entity

Our analysis of Hi-King's responses to our questionnaires and the factual information on the record led us to determine that Hi-King and its affiliated producers Yancheng Seastar Seafood Co., Ltd., Yancheng Hi-King Frozen Food Co., Ltd., and Jiangxi Hi-King Poyang Lake Seafood Co., Ltd., should be treated as a single entity for the purpose of calculating an antidumping duty margin. See Memorandum to Laurie Parkhill, entitled "Freshwater Crawfish Tail Meat from the People's Republic of China - Collapsing of

Yancheng Hi-King Agriculture Developing Co., Ltd., and its Affiliated Suppliers," dated June 17, 2008 (Collapsing Memo).

As we have found before, "{i}t is the Department's long-standing practice to calculate a separate dumping margin for each manufacturer or exporter investigated." See *Final Determinations of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 58 FR 37154, 37159 (July 9, 1993). Because we calculate margins on a company-specific basis, we must ensure that we review the entire producer or reseller, not merely a part of it. We review the entire entity due to our concerns regarding price and cost manipulation. See, e.g., *Dongkuk Steel Mill Co. v. United States*, Court No. 04–00190, slip op. 2005–75 at 15 (CIT 2005) ("Commerce considers both actual manipulation in the past and the possibility of future manipulation, which does not require evidence of actual manipulation during the period of review."); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27296, 27346 (May 19, 1997) ("The standard based on the potential for manipulation focuses on what may transpire in the future."). Because of this concern, we consider whether affiliated parties, including exporters and producers, should be treated as a single entity for purposes of calculating antidumping margins. When affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and there is evidence indicating a significant potential for the manipulation of price and production, we "collapse" related companies; that is, we treat the affiliated entities as a single entity for purposes of calculating the dumping margin. See 19 CFR 351.401(f). See also *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93–80 (CIT May 25, 1993). As detailed in our Collapsing Memo, we find that Hi-King is affiliated with its producers in accordance with sections 771(33)(B) and (E) of the Act. We also find that these affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. As detailed in our Collapsing Memo, we find that a potential for the manipulation of price and production exists with respect to Hi-King and its

affiliated producers pursuant to 19 CFR 351.401(f)(2). Therefore, we have treated Hi-King and the affiliated entities in question as a single entity for purposes of this review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margin exists for the period September 1, 2006, through August 31, 2007:

Manufacturer/Exporter	Percent Margin
Yancheng Hi-King Agriculture Developing Co., Ltd.	0.00

Comments

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit publicly available information to value factors no later than 20 days after the date of publication of these preliminary results of review. See 19 CFR 351.301(c)(3)(ii). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of

statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, because we calculated a margin of zero percent for Hi-King, we will instruct CBP to liquidate the entries of merchandise exported by Hi-King without regard to antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Hi-King, the cash-deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 223.01 percent; (4) for all non-PRC exporters of subject merchandise the cash-deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-23572 Filed 10-3-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-844]

Certain Lined Paper Products From India: Notice of Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain lined paper products from India for the period February 15, 2006, through December 31, 2006, the period of review (POR).¹ For information on the net subsidy rate for the reviewed company, Navneet Publications (India) Limited (Navneet), see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. See the "Public Comment" section of this notice.

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska or John Conniff, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington,

¹ Pursuant to 19 CFR 351.213(e)(2)(ii), because the Department received Navneet's request during the first anniversary month after publication of the order, this administrative review covers entries from February 15, 2006, the date of suspension of liquidation through December 31, 2006, the end of the most recently completed calendar year. (The date of suspension of liquidation corresponds to the publication in the *Federal Register* of the *Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 7916 (February 15, 2006) (*Preliminary Determination of Lined Paper Investigation*). However, for purposes of this administrative review, we will analyze data corresponding to calendar year 2006 (January 1, 2006, through December 31, 2006) to determine the subsidy rate for exports of subject merchandise made during the period in which liquidation of entries was suspended.

DC 20230; telephone: (202) 482-8362 or (202) 482-1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the CVD order on certain lined paper products from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006). On September 4, 2007, the Department published a notice of opportunity to request an administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 50657 (September 4, 2007) (*Opportunity to Request Review*).² On September 21, 2007, we received a timely request for review from Navneet, an Indian producer and exporter of subject merchandise.

On October 31, 2007, the Department initiated an administrative review of the CVD order on certain lined paper products from India, covering the period February 15, 2006, through December 31, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007).³

The Department issued a questionnaire to the Government of India (GOI) and Navneet (collectively, the respondents) on November 6, 2007. We received a questionnaire response from Navneet on December 8, 2007, and from the GOI on December 13, 2007. Between March 31, 2008, and July 9, 2008, we issued supplemental questionnaires to the respondents regarding programs addressed in the initial CVD questionnaire and received responses. Between April 8, 2008, and July 17, 2008 we received supplemental questionnaire responses from the GOI and Navneet.

²On October 1, 2007, we published a correction to the *Opportunity to Request Review* to correct the POR. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 55741 (October 1, 2007).

³In the notice of initiation published October 31, 2007, we listed the POR for certain lined paper products from India incorrectly. The correct POR is listed above.

On January 17, 2008, petitioners⁴ submitted information on a new subsidy allegation. On April 30, 2008, the Department initiated an investigation of the new subsidy allegation. See the Memorandum to Melissa G. Skinner, Director, Office 3, from Jolanta Lawska, Case Analyst, entitled, "New Subsidy Allegations for Navneet Publications (India), Ltd. (Navneet)," a public document on file in the Central Records Unit (CRU), room 1117 of the main Department building. On May 6, 2008, we issued a questionnaire on this new subsidy allegation to Navneet and the GOI. On May 19, 2008, and June 3, 2008, we received responses to the new subsidy questionnaires from the GOI and Navneet, respectively. On July 8, 2008, we issued a supplemental questionnaire to Navneet. On July 17, 2008, we received a Navneet's response.

On May 16, 2008, the Department published in the **Federal Register** an extension of the deadline for the preliminary results of this review to no later than September 29, 2008. See *Certain Lined Paper Products from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 28431 (May 16, 2008).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The company subject to this review is Navneet. This review covers 15 federal programs and 7 state programs.

Scope of Order

The scope of this order includes certain lined paper products, typically school supplies, composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets, including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However,

⁴Petitioners are the Association of American School Paper Suppliers and its members Mead Westvaco Corporation, Top Flight Inc., and Norcom Inc.

for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of the order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto. Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
 - Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
 - Index cards;
 - Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
 - Newspapers;
 - Pictures and photographs;
 - Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
 - Telephone logs;
 - Address books;
 - Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
 - Lined business or office forms, including but not limited to: Preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;

- Lined continuous computer paper;
- Boxed or packaged writing stationery (including but not limited to products commonly known as “fine business paper,” “parchment paper,” and “letterhead”), whether or not containing a lined header or decorative lines;

- Stenographic pads (“steno pads”), Gregg ruled,⁵ measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly TM lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly TM;

- Pen-top computer. The product must bear the valid trademark Fly TM;⁶

- Zwipes TM: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes TM pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes TM.⁷

- FiveStar R Advance TM: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1” wide elastic fabric band. This band is located 2³/₈” from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically

outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar R Advance TM.⁸

- FiveStar Flex TM: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by a 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex TM.⁹

Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020, and 4820.10.4001 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

⁸ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

⁹ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

Subsidies Valuation Information

I. Benchmarks for Loans and Discount Rates

In these preliminary results, we require the use of rupee-denominated long-term loans for purposes of our benchmark discount rate and long-term benchmark rate. Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company-specific cost of long-term, fixed-rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will normally use the actual cost of comparable commercial borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2)(i), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate vs. variable interest rate), the maturity of the loan (e.g., short-term vs. long-term), and the currency in which the loan is denominated.

However, when there are no comparable commercial loans, the Department may use a national average interest rate as a benchmark discount rate and long-term benchmark rate, pursuant to 19 CFR 351.524(d)(3)(i)(B) and 19 CFR 351.505(a)(3)(ii), respectively. In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of selecting a benchmark rate.

Navneet reported rupee-denominated and dollar-denominated commercial short-term loans that were outstanding during the POR.¹⁰ However, Navneet did not report any comparable long-term loans from commercial banks during the years under consideration that the Department could use for our benchmark discount rate and long-term benchmark rate. Therefore, in accordance with 19 CFR 351.524(d)(3)(i)(B) and 19 CFR 351.505(a)(3)(ii), we used India’s prime lending rate (PLR) as published by the Reserve Bank of India (RBI), as our long-term benchmark interest rate. The use of the PLR is consistent with the Department’s practice in prior Indian proceedings. See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549

¹⁰ In these preliminary results we are examining a countervailable program that requires the use of long-term benchmarks.

⁵ “Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

⁶ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

⁷ Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

(May 13, 2004) (*Final Results of First HRC Review*), and accompanying Issues and Decision Memorandum (*Final Results of First HRC Review Decision Memorandum*) at I.B. "Benchmarks for Loans and Discount Rate."

II. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS tables), as updated by the U.S. Department of the Treasury. This presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under review, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under review is significant, pursuant to 19 CFR 351.524(d)(2)(i). For assets used to manufacture products such as lined paper products, the IRS tables prescribe an AUL of 15 years.

In its questionnaire responses, Navneet did not rebut the regulatory presumption of a 15-year AUL. We, therefore, used a 15-year AUL to allocate any non-recurring subsidies for purposes of these preliminary results.

Further, for non-recurring subsidies, we have applied the "0.5 percent test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Analysis Of Programs

I. Programs Preliminarily Determined To Be Countervailable

1. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor program to the Passbook Scheme (PBS). DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are

consumed in the production of an export product. DEPS credits are valid for 12 months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION for the lined paper industry.

The Department has previously determined that DEPS is a countervailable program. *See, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006) (*Final Determination of Lined Paper Investigation*), and accompanying Issues and Decision Memorandum (*Final Determination of Lined Paper Investigation Decision Memorandum*) at IV. A.3. "Duty Entitlement Passbook Scheme." Specifically, we determined that under DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), is provided because (1) the GOI provides credits for the future payment of import duties, and (2) the GOI does not have in place and does not apply a system that is reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts. *Id.* Therefore, under section 771(5)(E) of the Act and 19 CFR 351.519(a)(4), we determined that the entire amount of import duty exemption earned during the POR constitutes a benefit. We also found DEPS to be specific under section 771(5A)(A) of the Act because the program is limited to exporters. *See Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.3. "Duty Entitlement Passbook Scheme." No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of the Department's finding.

We have previously determined that this program provides a recurring benefit under 19 CFR 351.519(c). *See, e.g., Preliminary Determination of Lined Paper Investigation*, 71 FR 7916, 7920 (unchanged in *Final Determination of Lined Paper Investigation*). *See also* 19 CFR 351.524(c). In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we preliminarily find that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the DEPS credits are earned. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India*, 64 FR 73131 (December 29, 1999) (*Final*

Determination of CTL Plate Investigation), at Comment 4 (explaining that for programs such as the DEPS, "We calculate the benefit on an 'earned' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known").

To calculate the benefit, we summed the credits that Navneet earned during the POR on each export shipment to the United States during the POR. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act.

Because DEPS credits are earned on a shipment-by-shipment basis, in calculating the net subsidy rate under the DEPS program, we normally divide the DEPS credits, or benefits, earned on exports of subject merchandise to the United States during the POR by the total sales of subject merchandise to the United States during the POR. However, in the case of Navneet, the U.S. sales on which the company earned the DEPS credits during the POR pertained to both subject and non-subject merchandise. Therefore, in these preliminary results, we calculated the net subsidy rate by dividing the benefit by Navneet's total export sales to the United States during the POR. *See, e.g., Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.3. "Duty Entitlement Passbook Scheme."

On this basis, we preliminarily calculate the net countervailable subsidy from the DEPS program to be 6.93 percent *ad valorem*.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at a reduced customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 Crore)¹¹ from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

The Department has previously determined that the import duty reductions provided under the EPCGS constitute a countervailable export subsidy. *See, e.g., Polyethylene*

¹¹ A crore is equal to 10,000,000 rupees.

Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007) (*Final Results of 3rd PET Film Review*), and accompanying Issues and Decision Memorandum (*Final Results of 3rd PET Film Review Decision Memorandum*) at “Export Promotion Capital Good Scheme.” See also *Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.2. “Export Promotion Capital Goods Scheme.”

Specifically, the Department has found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of Act, in the form of revenue foregone that otherwise would be due. See, e.g., *Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.2. “Export Promotion Capital Goods Scheme.” The Department also found this program to be specific under section 771(5A)(A) of the Act because it is contingent upon export performance. We further found that the EPCGS conferred a benefit under section 771(5)(E) of the Act. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

Navneet reported that it received import duty exemptions under the EPCGS program. For these preliminary results, we have determined the benefit for Navneet in accordance with our findings and treatment of this program in other Indian CVD proceedings. See, e.g., *Final Results of 3rd PET Film Review Decision Memorandum* at “Export Promotion Capital Good Scheme.” See also *Final Determination of Lined Paper Investigation and Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.2. “Export Promotion Capital Goods Scheme.” Under the Department’s approach, there are two types of benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department’s practice to treat any balance on an unpaid liability as an interest-free loan. See 19 CFR 351.505(d)(1).

Further, consistent with our policy, absent acknowledgment in the form of an official letter from the GOI that the liability has been eliminated, we treat benefits from these licenses as contingent liabilities. See, e.g., *Final*

Results of 3rd PET Film Review Decision Memorandum at “Export Promotion Capital Goods Scheme;” see also *Final Determination of Lined Paper Investigation Decision Memorandum* at IV.A.2. “Export Promotion Capital Goods Scheme.”

For those EPCGS licenses for which Navneet has not yet met the export obligations specified in the licenses by the end of the POR, we preliminarily find that the company had outstanding contingent liabilities during the POR. We further determine that the amount of the contingent liability will be treated as an interest-free loan in the amount of the import duty reduction or exemption.

Accordingly, for those unpaid duties for which Navneet has yet to fulfill their export obligations, we preliminarily find the benefit to be the interest that Navneet would have paid during the POR had it borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of a contingent liability interest-free loan because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for the company to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the long-term benchmark interest rates as described in the “Subsidies Valuation” section, *supra*. The rate used corresponds to the year in which Navneet imported the items under the program.

The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has been met. For certain licenses, Navneet reported that it had completed its export obligation under the EPCGS program, thereby eliminating the outstanding contingent liabilities on the corresponding duty exemptions. However, as explained above, in keeping with our practice, we have only accepted those claims that are accompanied by official letters from the GOI indicating that the company met its export obligation. Thus, for purposes of calculating the benefit, we treated licenses without accompanying letters from the GOI demonstrating satisfaction of the company’s export obligations as contingent liabilities.

For those licenses for which Navneet demonstrated that it had fulfilled the export obligations, we followed our methodology set forth in the *Final Determination of Lined Paper Investigation* and treated the import duty savings as grants received in the

year in which the GOI waived the contingent liability on the import duty exemptions. See, e.g., *Final Determination of Lined Paper Investigation Decision Memorandum*. In accordance with 19 CFR 351.524(b)(2), for each of the grant amounts related to the particular license, we performed the “0.5 percent test” to determine whether the benefit should be fully expensed in the year of receipt or allocated over the AUL used in this proceeding pursuant to the grant allocation methodology set forth in 19 CFR 351.524(d)(1). In all cases, the grant amounts of the licenses exceeded 0.5 percent of Navneet’s relevant sales. Therefore, we allocated the grant amounts over time using the methodology set forth under 19 CFR 351.524(d)(i).

To calculate the subsidy rate for this program, we summed the benefits from the waived licenses, which we determined confer a benefit in the form of a grant, and from those licenses that have yet to be waived, which we determined confer a benefit in the form of contingent liability loans. We then divided the total benefits received by Navneet’s total export sales for the POR. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 1.35 percent *ad valorem*.

3. The Government of India’s Income Deduction Program (80IB Tax Program)

Pursuant to the Income Tax Act of 1961, as amended by the Finance Act 2007, Chapter VIA, 80IB(4) (India) (2007), the GOI has implemented a tax policy to foster economic development of certain “industrially backward” regions in India. The tax exemptions allowed under the 80IB Tax Program are only available to companies located in designated geographical areas (referred to as “backward areas” by the GOI) within India.¹² Under the 80IB Tax Program, the GOI allows domestic companies that invest in economically less developed areas of India to reduce their corporate taxable income by up to 100 percent of profit gained at production facilities located in designated geographical areas for a period of five years and by up to 30 percent for the next five years. The benefit is applied to the gross total income of the tax payer and is claimed when a company files its income tax return at the end of every financial year.

We preliminarily determine that the 80IB Tax Program is a countervailable program. Specifically, we preliminarily

¹² “Industrially backward” states are states and union territories specified in the Eight Schedule of the Indian tax code.

determine that a financial contribution is provided under this program, in the form of foregone tax revenue, within the meaning of section 771(5)(D)(ii) of the Act. We further preliminarily determine that the GOI provided a benefit under this program in an amount equal to the tax savings under section 771(5)(E) of the Act. In addition, we preliminarily determine that the program is limited to enterprises in geographically limited areas and, therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act.

One of Navneet's manufacturing plants operates in a region that is designated by the GOI as an "industrially backward" territory of India and therefore, the company is eligible for the tax incentives described above. Navneet reported that it received tax deductions under this program during the POR on its 2006 corporate income tax return, which was the return filed by the company during the POR. The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). Under 19 CFR 351.509(a), the benefit is equal to the difference between the income tax that the company would have paid absent the program and the income tax the company paid under the program. Therefore, to calculate the benefit, we subtracted the amount of 2006 income tax Navneet paid under the program from the amount of income tax Navneet would have paid absent the program.

To calculate the net subsidy rate, we divided the benefit by Navneet's total sales for POR. On this basis, we preliminarily calculated an *ad valorem* rate of 0.47 percent.

II. Programs Preliminarily Determined Not To Be Used

A. Programs Administered by the Government of India

1. Duty Replenishment Certificate Scheme.
2. Advance License Program.
3. Export Processing Zones and Export Oriented Units.
4. Target Plus Scheme.
5. Export Processing Zones.
6. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC).
7. Market Development Assistance.
8. Status Certificate Program.
9. Market Access Initiative.
10. Loan guarantees from the GOI.
11. Exemption of Export Credit from Interest Taxes.
12. Pre and Post-shipment Export Financing.

B. Programs Administered by the State Governments

State Government of Gujarat Programs:

1. State Government of Gujarat Provided Tax Incentives.

State Government of Maharashtra Programs:

2. Sales Tax Program from Maharashtra.
3. Electricity Duty Exemptions Under the State Government of Maharashtra's (SGM) Package Scheme of Incentives of 1993.
4. Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001) and Maharashtra Industrial Policy (MIP of 2006).
5. Infrastructure Subsidies to Mega Projects.
6. Land for Less than Adequate Remuneration (for firms operating in areas outside of the Bombay and Pune metropolitan areas).
7. Loan Guarantees Based on Octroi Refunds by the SGM.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated a subsidy rate for Navneet for the period February 15, 2006, through December 31, 2006. We preliminarily determine the total estimated net countervailable subsidy rate for Navneet is 8.75 percent *ad valorem* for 2006.

If the final results of this review remain the same as these preliminary results, the Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of review. We will instruct CBP to collect cash deposits for Navneet at the CVD rate indicated above of the Free On Board (F.O.B.) invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. These deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results not later than ten days after the public announcement of this notice. Pursuant to 19 CFR 351.309(c)(ii), interested parties may

submit written comments in response to these preliminary results within 30 days after the publication date of these preliminary results. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department, pursuant to 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of statutes, regulations and case cited. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), the Department will publish the final results of this administrative review within 120 days after the publication date of preliminary results including the results of its analysis of arguments made in any case or rebuttal briefs.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 29, 2009.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-23565 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Office of National Marine Sanctuaries for Fiscal Year 2006

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of indirect cost rates for the Office of National Marine Sanctuaries for Fiscal Year 2006.

SUMMARY: The National Oceanic and Atmospheric Administration's (NOAA's) Office of National Marine Sanctuaries (ONMS) is announcing the establishment of new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2006. The indirect cost rates for this fiscal year and dates of implementation are provided in this notice. More information on these rates and the NMSP policy can be obtained from the address provided below.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, 301-713-3125, ext. 271; (FAX: 301-713-0404; e-mail: Harriet.Sopher@noaa.gov).

SUPPLEMENTARY INFORMATION: The mission of the ONMS with respect to Natural Resource Damage Assessment is to restore injuries to sanctuary resources caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C., 9601 *et seq.*) or the Oil Pollution Act of 1990 (OPA) (33 U.S.C., 2701 *et seq.*), or physical injuries under the National Marine Sanctuaries Act (NMSA) (16 U.S.C., 1431 *et seq.*). The NOAA ONMS consists of the following component organizations: Thirteen National Marine Sanctuaries and one National Monument within NOAP's National Ocean Service. The ONMS conducts Natural Resource Damage Assessments (NRDA) as a basis for recovering damages from responsible parties and uses the funds recovered to restore injured sanctuary resources.

When addressing NRDA incidents, the costs of the damage assessment are recoverable from responsible parties who are potentially liable for an incident. Costs include direct and indirect costs. Direct costs are costs for activities that are clearly and readily attributable to a specific output. In the context of the ONMS, outputs may be associated with damage assessment cases, or may be represented by other program products such as damage assessment regulations. In contrast, indirect costs reflect the costs for activities that collectively support the ONMS's mission and operations. For example, indirect costs include general administrative support and traditional overheads. Although these costs may not be readily traced back to a specific direct activity, indirect costs may be allocated to direct activities using an indirect cost distribution rate.

Consistent with standard Federal accounting requirements, the ONMS is

required to account for and report the full costs of its programs and activities. Further, the ONMS is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the ONMS has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recover of indirect cost rates subject to its requirements.

The ONMS Indirect Cost Effort

In October 2002, the ONMS hired the public accounting firm Cotton & Company (C&C) to: (1) Evaluate the cost accounting system and allocation practices; (2) recommend the appropriate indirect cost allocation methodology; and, (3) determine the indirect cost rates for the organizations that comprise the ONMS.

The ONMS requested an analysis of its indirect costs for fiscal year 2002. The goal was to develop the most appropriate indirect cost rate allocation methodology and rates for the ONMS component organizations. C&C has continued its assessment of the ONMS indirect cost rate system and structure annually from FY2002 through FY2006.

C&C concluded that the cost accounting system and allocation practices of the ONMS component organizations are consistent with Federal accounting requirements. C&C also determined that the most appropriate indirect allocation method was the Direct Labor Cost Base for all ONMS component organizations. The Direct Labor Cost Base is computed by allocating total indirect costs over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect cost rates that C&C has computed for the ONMS component organizations were further assessed as being fair and equitable. A report on C&C's effort, their assessment of the ONMS's cost accounting system and practice, and their determination respecting the most appropriate indirect cost methodology and rates can be obtained from: Harriet Sopher, ONMS 1305 East West Highway, Silver Spring, MD 20910.

C&C reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2006 indirect cost rates.

The ONMS Indirect Cost Rates and Policies

The ONMS will apply the indirect cost rates for FY 2006 as recommended by C&C for each of the ONMS component organizations as provided in the following table:

ONMS component organization	FY 2006 indirect rate (percent)
Office of National Marine Sanctuaries (ONMS)	137.35
ONMS Florida Keys National Marine Sanctuary (FKNMS)	216.43

The FY 2006 rates identified in this policy will be applied to all damage assessment and restoration case costs incurred between October 1, 2005 and present, using the Direct Labor Cost Base allocation methodology. The ONMS will use the FY 2006 rates for future fiscal years until year-specific rates can be developed. For cases that have been settled and for costs claims paid prior to the effective date of the fiscal year in question, the ONMS will not re-open any resolved matters for the purpose of applying the rates in this policy. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the rates in this policy.

Dated: September 25, 2008.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E8-23453 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XK87

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Recreational Red Snapper Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Monday, October 20, 2008 and conclude no later than 3 p.m. on Tuesday, October 21, 2008.

ADDRESSES: This meeting will be held at the LaQuinta Inn, 2610 Williams Boulevard, Kenner, LA 70062; telephone: (504) 466-1401.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT:

Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

The Council previously reviewed 27 recommendations from the AP for improving recreational red snapper management, and selected four of the recommendations for further review. Those recommendations include: (1) regional management of recreational red snapper fishing; (2) recreational reef fish permitting system with red snapper endorsement; (3) limited access privilege programs in the for-hire and private recreational sectors; and (4) catch cards and fish tag systems. At this meeting, the AP will discuss issues and possible alternatives to consider for each of these ideas, and will provide recommendations back to the Council for possible further development.

Although other non-emergency issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

A copy of the agenda can be obtained by calling (813) 348-1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 1, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service. [FR Doc. E8-23545 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XK88

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council to convene its Standing SSC via conference call.

DATES: The conference call will be held October 21, 2008, at 9:30 a.m. EDT.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Interim Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Standing SSC will discuss and develop recommendations for the Council on a 5-year research plan for fisheries managed by the Council. Once approved by the Council at its October 2008 meeting, the 5-year research plan will be submitted to the NMFS for implementation and funding.

Although other non-emergency issues not on the agenda may come before the Standing SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during the meeting. Actions will be restricted to the issue specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Standing SSC's intent to take action to address the emergency.

The conference call will begin at 9:30 a.m. EDT and conclude no later than 12:30 p.m. EDT. Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES**), and the National Marine Fisheries Service (NMFS) offices as follows:

St. Petersburg, FL

263 13th Ave. S., St Petersburg, FL 33701, Contact: Karolyn Potter, telephone: (727) 551-5705;

Miami, FL

75 Virginia Beach Dr., Miami, FL 33149, Contact: Sonia Prevo, telephone: (305) 361-4200; and

Panama City, FL

3500 Delwood Beach Rd., Panama City, FL 32408, Contact: Janice Hamm, telephone: (850) 234-6541.

Special Accommodations

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 1, 2008.

Tracey L. Thompson,

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

[FR Doc. E8-23546 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XK89

Pacific Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings on draft Amendment 20 (Trawl Rationalization) to its groundfish fishery management plan (FMP). These hearings are preparatory to the final Council decision on Amendment 20, scheduled for the November 2-7, 2008 Council meeting, in San Diego, CA.

DATES: The hearings will be held on October 27-29, 2008.

ADDRESSES: Hearing locations will be held in Newport, OR, Olympia, WA, Eureka, CA, Astoria, OR, and Santa Cruz, CA. See **SUPPLEMENTARY INFORMATION** for specific addresses.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, telephone: (503) 820-2280.

SUPPLEMENTARY INFORMATION: These public hearings are being held in preparation for a Council final decision on trawl rationalization scheduled for its November 2008 meeting. The agenda for the November 2008 Council meeting will be published in a subsequent **Federal Register**, prior to the actual meeting. The analytical package supporting the Council deliberations (including a preliminary draft environmental impact statement) is available from the Council web site (www.pcouncil.org) and on request from the Council office.

Schedule for Public Hearings

Public hearings will be held to receive comments on the draft Amendment 20 at the following dates, times and locations:

October 27, 2008 (2 P.M.):

- Best Western Agate Beach Inn, (2 sections of Ballroom TBD), 3019 N. Coast Highway, Newport, OR, telephone: (541) 265-9411.

October 28, 2008 (Olympia, 3 P.M., Eureka, 2 P.M.):

- Washington Dept. of Fish Wild, Natural Resources Building, 1st Floor, Room 172, 1111 Washington Street NE, Olympia, WA 98504.

- Red Lion, Evergreen Ballroom, 1929 Fourth Street, Eureka, CA.

October 29, 2008 (3 P.M.):

- Holiday Inn Express, Riverview 1 and 2, 205 West Marine Drive, Astoria, OR.

- University Inn and Conf Center, Sierra Room, 611 Ocean Street, Santa Cruz, CA.

These hearings are exclusively for the purpose of receiving public comment on draft Amendment 20 to the groundfish FMP and the accompanying analytical package. No formal actions will be taken at the hearings.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 (voice), or (503) 820-2299 (fax) at least 5 days prior to the meeting date.

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

Dated: October 1, 2008.

Tracey L. Thompson,

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

[FR Doc. E8-23548 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0809181225-81227-01]

Scientific Data Stewardship Project Office for 2009

AGENCY: National Environmental Satellite Data and Information Service Program Office (NESDISPO), National Environmental Satellite Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The Scientific Data Stewardship (SDS) Project seeks to support the development and stewardship of Climate Data Records (CDRs) for the atmosphere, cryosphere, oceans, and land surface. The Project follows the National Research Council's 2004 distinction between Fundamental and Thematic Climate Data Records, and is initially focused on Fundamental CDRs and lower complexity Thematic CDRs. The SDS Project is managed by NOAA, but is informed by other government agencies such that its results represent a government-wide contribution to climate change detection, assessment, understanding, adaptation and/or mitigation.

DATES: Letters of Intent should be received no later than 5 p.m. Eastern Time, October 31, 2008. Full proposals must be received no later than 5 p.m. Eastern Time, December 15, 2008.

ADDRESSES: Applications are available at <http://www.grants.gov>. If the applicant does Internet it take several weeks, involving multiple steps. In order to allow sufficient time for this process, applicants should register as soon as possible, even if they are not yet ready to submit their proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800) 518-4726 or support@grants.gov.

FOR FURTHER INFORMATION CONTACT:

SDSPO Grants Manager: Linda S. Statler, NOAA Scientific Data Stewardship Project Office, 151 Patton Ave., Asheville, NC 28801; *Phone:* 828-271-4657; *E-mail:* Linda.S.Statler-at-noaa.gov. SDSPO Project Manager: Jeff Privette, NOAA Scientific Data Stewardship Project Office, 151 Patton Ave., Asheville, NC 28801; *Phone:* 828-271-4331; *E-mail:* Jeff.Privette-at-noaa.gov.

SUPPLEMENTARY INFORMATION: As part of its climate mandate, the National

Oceanic and Atmospheric Administration (NOAA) has a responsibility to provide the Nation with objective data and tools to help characterize, understand, predict, mitigate and coordinate its Climate Data Record (CDR) activities with other agencies through the U.S. adapt to climate change and variability. To help fulfill that responsibility, NOAA has begun Climate Change Science Program (CCSP). The National Research Council defines a CDR as "a time series of measurements of sufficient length, consistency, and continuity to determine climate variability and change." NOAA's National Climatic Data Center (NCDC) initiated the Scientific Data Stewardship (SDS) Project (hereafter referred to as the Project) to lead the Agency's CDR activities and to coordinate with the partner agencies. Given that early algorithm development is supported elsewhere, the Project is focused on the generalization and application of mature algorithms to multiple satellites and sensors which together span climate-relevant time periods. It also supports development of Climate Information Records (CIRs), defined as time series derived from CDRs and related long-term measurements that provide specific information (e.g., drought area, hurricane trends) about complex environmental phenomena in a manner useful to a variety of applications and user communities. Together, the various SDS products serve a wide range of scientific, commercial, decision support and policy-making needs. Various CDRs have been developed in the past, most notably through the NOAA-NASA Pathfinder Program in the 1990s. NOAA intends to leverage lessons from such efforts into a more systematic, comprehensive and sustained program. To help achieve this, the Project plans to execute its responsibilities in partnership with the larger scientific community through regular NOAA Announcements of Opportunity as well as through community reviews and working groups. The Project represents one of NOAA's primary contributions to the CCSP's climate data goals.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at <http://www.grants.gov>.

The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: 49 U.S.C. 44720(b) and 33 U.S.C. 883d.

CFDA: 11.440, Environmental Sciences, Applications, Data, and Education.

Funding Availability: The total anticipated federal funding in FY 2009 is \$2.6M for new awards. The anticipated number of new awards, pending adequate proposals of merit, is from 5 to 15. Please be advised that actual funding levels will depend upon the final FY 2009 budget appropriations. Current plans assume that 100% of the total resources provided through the present FY 2009 SDS Announcement will support extramural efforts that include the broad academic, non-profit, federal and commercial communities. In FY 2007, the first year of SDS grants, the Project made eight awards totaling approximately \$800K. In FY 2008, the Project expanded total funding to nearly \$1,000K, which included funding for three new starts. Past or current grantees funded under this announcement are eligible to apply for a new award, which builds on previous activities or areas of research not covered in the previous award. Current grantees should not request supplementary funding for ongoing research through this announcement. The exact amount of funds that may be representatives. Awards are to be up to three years in length except where noted otherwise awarded will be determined in pre-award negotiations between the applicant and NOAA by the Project.

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; for profits; commercial organizations; international organizations; state, local and Indian tribal governments; and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Please Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720(b). Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: This competition does not have Cost Sharing requirements. However, applicants are welcome to describe applicable cost-sharing when relevant.

Evaluation and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation

criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects: 1. Importance and/or relevance and applicability of proposed project to the program goals (40%). This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, Project, NOAA and CCSP CDR goals, and if the work is applicable to the FY 2009 Priority State, or local activities. For the SDS competition, this includes relevance to the SDS CDRs or activities. 2. Technical/Scientific Merit (40%). This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. 3. Overall Qualifications of Applicants (10%). This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. 4. Project Costs (10%). The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. 5. Outreach and Education (0%). NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. For the SDS competition, this criterion is not scored.

Review and Selection Process: Once a full application has been received by SDSPO, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. Independent peer mail reviewers, and/or independent peer panel reviewers consisting of Federal, or a combination of both Federal and non-Federal experts, will evaluate full proposals in accordance with the evaluation criteria. If peer mail review and peer panel review are both conducted, the mail reviews will be provided to the panel for use in its deliberations prior to providing its ratings. If only a peer mail review is conducted, the Project Manager will use the rank numerical order of the mail reviews to determine funding recommendations. If only a peer panel review or both a peer panel review and a peer mail review are conducted, the Project Manager will use the numerical rank order of the peer review panel to determine funding recommendations. Occasionally a reviewer may, due to lack of familiarity in a particular area, choose not to score a particular proposal. The scores from remaining

peer panel reviewers for that proposal will be averaged to produce a single numerical score for the proposal. The average score for each proposal will be used to determine rank of proposals. The Project Manager will recommend proposals to the Selecting Official in numerical rank order unless the proposal is justified to be selected out of rank order based upon additional documented requirements of any selection factor listed in section C. below. The Project Manager will review the amounts requested for each selected proposal (including costs for computing and networking services) and recommend the total duration and the amount of funding, which may be less than the proposal and budget requested. The Selecting Official will review the recommendations.

Selection Factors for Projects: The Selecting Official shall award in rank order unless a proposal is justified to be selected out of rank order based upon any of the following factors: 1. Availability of funding 2. Balance/distribution of funds a. Geographically b. By type of institutions c. By type of partners d. By research area e. By project types 3. Duplication of other projects funded or considered for funding by NOAA/federal agencies 4. SDS Project priorities and policy factors 5. Applicant's prior award performance 6. Partnerships with/participation of targeted group 7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

Intergovernmental Review: Applications under the SDS Project are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at

the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to, nor shall a 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: 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 comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, 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 for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E8-23516 Filed 10-3-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-85]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-85 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 08 2008
In reply refer to:
USP009261-08

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-85, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Finland for defense articles and services estimated to cost \$406 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

House

**Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

Senate

**Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-85**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Finland
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|-----------------------|
| Major Defense Equipment* | \$ 81 million |
| Other | \$ <u>325 million</u> |
| TOTAL | \$ 406 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** This is the possible third phase of the F-18 Mid-Life Upgrade (MLU) Program, consisting of F-18C/D Fleet Retrofit Kits of the following systems: 79 Multifunctional Information Display Systems/Low Volume Terminals (MIDS/LVT), 70 AN/ARC-210 (RT-1851A(c)) Radios, including Single Channel Ground and Airborne Radio System (SINCGARS), 75 AN/AYQ-9(V) Stores Management System Upgrades, 72 MIDS Electronic Interference Blanking Units, 72 Color Cockpit Displays, 70 Joint Helmet Mounted Cueing Systems (JHMCS) Laser Helmet Shields, 1 AGM-154C Joint Standoff Weapon (JSOW) Captive Air Training Missile, 15 AGM-154C JSOW missiles, and 1 Lot JHMCS Spares. The proposed program support includes recorders, receivers, devices, Joint Mission Planning system upgrades, software test and integration center upgrades, engineering change proposals, component improvement program, spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Navy (LBH)
- (v) **Prior Related Cases, if any:**
- | |
|--|
| FMS case LBB - \$ 63 million - 4Aug01 |
| FMS case LBC - \$127 million - 1Jan04 |
| FMS case LBD - \$252 million - 25Jul07 |

* as defined in Section 47(6) of the Arms Export Control Act.

- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**
- (viii) **Date Report Delivered to Congress: SEP 0 8 2008**

POLICY JUSTIFICATION

Finland – F-18 Mid-Life Upgrade Program

The Government of Finland has requested a possible sale for the third phase of the F-18 Mid-Life Upgrade (MLU) Program, consisting of F-18C/D Fleet Retrofit Kits of the following systems: 79 Multifunctional Information Display Systems/Low Volume Terminals (MIDS/LVT), 70 AN/ARC-210 (RT-1851A(c)) Radios, including Single Channel Ground and Airborne Radio System (SINCGARS), 75 AN/AYQ-9(V) Stores Management System Upgrades, 72 MIDS Electronic Interference Blanking Units, 72 Color Cockpit Displays, 70 Joint Helmet Mounted Cueing Systems (JHMCS) Laser Helmet Shields, 1 AGM-154C Joint Standoff Weapon (JSOW) Captive Air Training Missile, 15 AGM-154C JSOW missiles, and 1 Lot JHMCS Spares. The proposed program support includes recorders, receivers, devices, Joint Mission Planning system upgrades, software test and integration center upgrades, engineering change proposals, component improvement program, spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is \$406 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Europe.

The Finnish Air Force (FAF) intends to purchase the MLU Program equipment to enhance survivability and communications connectivity and to extend the useful life of its F-18 fighter aircraft. It has extensive experience operating the F-18 aircraft and should have no difficulties incorporating the upgraded capabilities into its forces. The FAF needs this upgrade to keep pace with high tech advances in sensors, weaponry, and communications.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government or contractor representatives to travel to Finland for approximately four months to provide technical support for equipment preparation, installation and testing, and checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-85**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The third phase of the F-18 Mid-Life Upgrade (MLU) Program consisting of F-18C/D Fleet Retrofit Kits will include the following classified or sensitive components and weapons:

a. The AN/ARC-210 Radio (RT-1851), including Single Channel Ground and Airborne Radio Systems (SINCGARS), FM Immunity, 8.33 KHz channel spacing, Variable Message Format (VMF), HAVEQUICK and Embedded Secure Voice capabilities. The AN/ARC-210 transceiver can be operated as a normal non-Electronic Counter Countermeasures (ECCM) type VHF/UHF radio system. Addition of various types of ECCM module subassemblies enables the AN/ARC-210 Communications System to operate in SATCOM and jam-resistant modes.

b. The Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS LVT can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios. MIDS LVT is classified Confidential. The MIDS Enhanced Interference Blanking Units (EIBU) provides validation and verification of equipment and concept. EIBU enhances input/output signal capacity of the MIDS LVT and addresses parts obsolescence.

c. The Global Positioning System (GPS) upgrade to include MAGR 2000 with Selective Availability Anti-Spoofing Module (SAASM) and Complementary Navigation Message (CNM) for use with GPS guided munitions. Employment of GPS smart weapons requires the use of the CNM and Precise Position Service (PPS). The requirement is to upgrade to the PPS GPS system to provide CNM to GPS Guided Weapons. GPS and Navigation Systems (GNS) act as the Center to coordinate military efforts. GNS offers the most advanced military GPS user equipment available, including avionics, high anti-jam systems, integrated GPS/INS navigators, and high performance Selective Availability Anti-Spoof Module (SAASM) receivers. The MAGR 2000 design is a GPS Receiver Applications Module (GRAM) based upon

system architecture that is modular in design and incorporates modern electronics. The MAGR 2000 is a form, fit, and function backward compatible replacement of the MAGR, and provides enhancements to include improved acquisition and GPS solution performance, all-in-view GPS satellite tracking, and GPS integrity. The use of the SAASM security architecture significantly enhances the combatant commander's ability to use GPS precise positioning, velocity and time, in all environments. Complementary Navigation Message contains navigation message data demodulated from the GPS satellite signals that has been stripped of parity and packed together. All countries authorized PPS equipment can buy GPS receivers that output the CNM. The configuration requested is compatible for use in F-18 aircraft.

d. The Joint Mission Planning System (JMPS) will provide mission planning capability for support of military aviation operations. It will also provide support for unit-level mission planning for all phases of military flight operations and have the capability to provide necessary mission data for the aircrew. JMPS will support the downloading of data to electronic data transfer devices for transfer to aircraft and weapon systems. A JMPS for a specific aircraft type will consist of basic planning tools called the Joint Mission Planning Environment (JMPE) mated with a Unique Planning Component (UPC) provided by the aircraft program. In addition, UPCs will be required for specific weapons, communication devices, and moving map displays in order for proper Mission Planning.

e. The Solid State Recorder (SSR) capabilities incorporated into the F-18C/D aircraft both replace the existing Cockpit Video Recording System (CVRS) and add capability to capture and store Electro-optical/Infrared (EO/IR) Imagery. Use of SSR technology will overcome numerous obsolescence issues with the existing CVRS, provides greater memory capacity, and allows for future network centric operations such as real-time/near real-time imagery in/out of cockpit.

f. The AGM-154C Joint Standoff Weapon (JSOW) is a low observable, 1000 lb. class, INS/GPS-guided, family of air-to-ground glide weapons. JSOW consists of a common airframe and avionics that provides for a modular payload assembly to attack stationary and moving massed light-armored and armored vehicle columns, surface-to-air targets and personnel. JSOW provides combat forces with all weather, day/night, multiple kills per pass, launch and leave, and standoff capability. JSOW C carries a unitary warhead. The JSOW All Up Round is Unclassified, major components and subsystems are classified up to Secret; and technical data and other documentation are to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23331 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-87]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-87 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

SEP 08 2008

**In reply refer to:
USP009889-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-87, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost \$89 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-87

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Israel
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|----------------------------|
| Major Defense Equipment* | \$ 83 million |
| Other | \$ <u>6 million</u> |
| TOTAL | \$ 89 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 28,000 M72A7 66mm Light Anti-Armor Weapons (LAAWs), 60,000 M72AS 21mm Sub-Caliber Training Rockets, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Navy (ATV)
- (v) **Prior Related Cases, if any:** FMS case ATR - \$15M – 3Jan08
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – M72A7 Light Anti-Armor Weapons (LAAWs)

The Government of Israel has requested a possible sale of 28,000 M72A7 66mm Light Anti-Armor Weapons (LAAWs), 60,000 M72AS 21mm Sub-Caliber Training Rockets, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is \$89 million.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support the Israeli commitment to peace with other regional Arab countries, enhance regional stability, and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

The proposed sale will enhance the foreign policy and national security objectives of the U.S. by providing the Israeli Government with a lightweight assault rocket that will enable Israel to maintain its operational capability, and provide greater mission flexibility to deter aggression in the region. Israel will have no difficulty absorbing this weapon capability into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor will be Talley Defense of Mesa, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-87

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The M72A7 Light Anti-Armor Weapon is a lightweight assault rocket that provides greater flexibility on the battlefield. This weapon system has the capability to defeat targets such as covered enemy fighting positions, or light armored vehicles or out of range hand grenades and other close in weapon systems.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23332 Filed 10-3-08; 8:45 am]
BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal Nos. 08-97]

36(b)(1) Arms Sales Notification**AGENCY:** Department of Defense, Defense Security Cooperation Agency.**ACTION:** Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-97 with attached transmittal and policy justification.

Dated: September 25, 2008.

Patricia L. Toppings,*Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 08 2008

In reply refer to:
USP011266-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-97, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Jordan for defense articles and services estimated to cost \$390 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-97

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Jordan
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$390 million</u> |
| TOTAL | \$390 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** extend the Jordan Border Security Program (JBSP) to cover Increment 2 requirements. The proposed sale will include exportable Commercial-Off-The-Shelf (COTS) hardware and exportable U.S. military Command and Control application software and hardware, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support.
- (iv) **Military Department:** Army (WAW, Amd #3)
- (v) **Prior Related Cases, if any:** none.
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – Increment 2 Requirements for Border Security Program

The Government of Jordan has requested a possible sale to extend the Jordan Border Security Program (JBSP) to cover Increment 2 requirements. The proposed sale will include exportable Commercial-Off-The-Shelf (COTS) hardware and exportable U.S. military Command and Control application software and hardware, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support. The estimated cost is \$390 million.

The proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

Jordan needs this equipment to upgrade its border security to allow greater dependence on modern technology rather than mostly manual means. These defense articles and services will enable Jordan to more effectively organize its armed forces to be able to respond quickly, effectively, and comprehensively to situations concerning its national security. Jordan will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be DRS Corporation in Gaithersburg, Maryland. There are no known offset agreements proposed in connection with this potential sale.

The United States Government and contractor representatives will participate in program services and technical reviews during 2008 to 2013. The number of in-country U.S. Government personnel and contractor representatives required to support this program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8-23333 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-84]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-84 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 08 2008

In reply refer to:
USP008764-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-84, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost \$176 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House

Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate

Committee on Foreign Relations
Committee on Armed Service
Committee on Appropriations

Transmittal No. 08-84

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Egypt
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$141 million |
| Other | \$ <u>35 million</u> |
| TOTAL | \$176 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 4 UH-60M BLACK HAWK helicopters with 8 T-700-GE-701D engines, 1 spare T-700-GE-701D engine, 4 AN/APR-39A(V)2 Radar Signal Detecting Sets, 4 AN/ALQ-144A(V)1 Infrared Countermeasure Sets, 4 AN/AAR-57 Common Missile Warning Systems, 4 AN/AVR-2A Laser Warning Sets, and 4 Improved Hover Infrared Suppression Systems. Also included: SAFIRE/II/HD Forward Looking Infrared, M130 Flare and Chaff Dispensers, and AN/ALE-47 Countermeasures Dispenser Systems, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. government and contractor technical and logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Army (VAT)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – UH-60M BLACK HAWK Helicopters

The Government of Egypt has requested a possible sale of 4 UH-60M BLACK HAWK helicopters with 8 T-700-GE-701D engines, 1 spare T-700-GE-701D engine, 4 AN/APR-39A(V)2 Radar Signal Detecting Sets, 4 AN/ALQ-144A(V)1 Infrared Countermeasure Sets, 4 AN/AAR-57 Common Missile Warning Systems (CMWS), 4 AN/AVR-2A Laser Warning Sets, and 4 Improved Hover Infrared Suppression Systems (HIRSS). Also included: SAFIRE/II/HD Forward Looking Infrared (FLIR), M130 Flare and Chaff Dispensers, and AN/ALE-47 Countermeasures Dispenser Systems (CMDs), spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is \$176 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt needs these helicopters to support a newly established military Search and Rescue Operations Center and to assist with border security missions. The helicopters will be used to perform search and rescue, surveillance, observation missions, and to modernize Egypt's existing aircraft inventory. Egypt will have no difficulty absorbing these additional aircraft into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft (United Technologies) Corporation of Stratford, Connecticut, Schweizer Aircraft Company of Horseheads, New York, and General Electric Aircraft Company of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U. S. Government or contractor personnel in Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-84**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The UH-60M BLACK HAWK helicopter contains communications and identification equipment, navigation equipment, aircraft survivability equipment, displays and sensors. The airframe itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation, and maintenance of the BLACK HAWK helicopter is Unclassified. The highest level that could be revealed through reverse engineering or testing of the end item is Secret.

2. The UH-60M BLACK HAWK helicopter will include the following equipment listed below, either installed on the aircraft or included in the sale:

a. AN/ALQ-144A(V)1 Infrared Countermeasure Set is an active, continuously operating, omni-directional, electrically fired infrared (IR) jamming system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. The hardware is classified Confidential and releasable technical manuals for operation and maintenance are classified Secret.

b. AN/APR-39A(V)2 Radar Signal Detecting Set is a system which provides warning of a radar directed air defense threat to allow appropriate countermeasures. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; and releasable technical data (technical performance) is classified Secret. The system can be programmed with threat data provided by the purchasing country.

c. AN/AVR-2A Laser Detecting Set detects, prioritizes in order of lethality and characterizes threats. With clear audible and visual warnings on the display the crew knows it's been targeted, what are coming first and which direction the threat is coming from. The hardware is classified Confidential and releasable technical manuals for operation and maintenance are classified Secret.

d. AN/AAR-57 Common Missile Warning System is a passive laser warning system that receives, processes, and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential, and releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

e. The AN/ALE-47 Countermeasures Dispensing System is an integrated, reprogrammable, computer-controlled system to dispense expendables/decoys to enhance aircraft survivability. The system is designed to employ countermeasures according to a program developed and implemented by the aircrew. This is an upgraded version of the ALE-40, ALE-39 and M-130 systems. The hardware and releasable technical manuals for operation and maintenance are Unclassified.

f. The M130 Flare and Chaff Dispenser dispenses objects to confuse threat radar devices. Radar cross section and frequency coverage are sensitive elements. The hardware and releasable technical manuals for operation and maintenance are Unclassified. Aircraft optimization is the critical element, and reverse engineering is not a major concern.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23334 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

**SEP 08 2008
In reply refer to:
USP002184-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost \$445 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-16

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** United Arab Emirates
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$398 million |
| Other | <u>\$ 47 million</u> |
| TOTAL | \$445 million |
- (iii) **(Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 288 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM) Air Intercept Missiles, 2 Air Vehicle-Instrumented (AAVI), 144 LAU-128 Launchers, Surface Launched Advanced Medium Range Air-to-Air Missile (SL-AMRAAM) software, missile warranty, KGV-68B COMSEC chips, training missiles, containers, support and test equipment, missile components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.
- (iv) **Military Department:** Air Force (YAE) Army (ZUH)
- (v) **Prior Related Cases, if any:**
FMS Case YAB-\$179M-20Aug02
FMS Case YAD-\$325M-pending
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**United Arab Emirates – Surfaced Launched Advanced Medium Range Air-to-Air Missile (SL-AMRAAM)**

The Government of United Arab Emirates has requested a possible sale of 288 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM) Air Intercept Missiles, 2 Air Vehicle-Instrumented (AAVI), 144 LAU-128 Launchers, Surface Launched Advanced Medium Range Air-to-Air Missile (SL-AMRAAM) software, missile warranty, KGV-68B COMSEC chips, training missiles, containers, support and test equipment, missiles components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements. The estimated cost is \$445 million.

Within the SL-AMRAAM system, only the AN/MPQ-64 F1 Sentinel Radar (export variant) software and the AMRAAM missile must be sold internationally via FMS. All other components will be sold through direct commercial sale (DCS).

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing this weapon system into its armed forces. The proposed sale of this weapon system will not affect the basic military balance in the region.

The principal contractor will be: Raytheon Corporation in Waltham, Massachusetts. The purchaser intends to request offsets; agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will require the assignment of 10 U.S. Government personnel and 15 Contractor representatives to the United Arab Emirates for a period of three months. Also, various personnel will be required to travel to the United Arab Emirates in one week intervals, for surveys and other program requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-16**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The SL-AMRAAM is a lightweight day or night, and adverse weather non-line of sight system for countering cruise missiles and unmanned air vehicle threats with engagement capabilities in excess of 18 kilometers. The system is comprised of a Fire Control System, for command and control, and missile launcher fire unit platforms, which hold AIM-120 AMRAAM missiles. The Sentinel radar (export variant), which will be sold separately via direct commercial sale (DCS), provides surveillance and fire control data for the system.

2. The Sentinel Export configuration will be a derivative of the US Army Sentinel Radar, which will be, classified Secret at the system level, when the classified software is loaded into the hardware. Within the SL-AMRAAM system, only the AN/MPQ-64 F1 Sentinel Radar (export variant) software, and the AMRAAM missile must be sold internationally through FMS.

3. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination. Anti-tampering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23335 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-19 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

**SEP 08 2008
In reply refer to:
USP002188-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-19, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost \$6.95 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-19

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** United Arab Emirates
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|-----------------------|
| Major Defense Equipment* | \$4.20 billion |
| Other | <u>\$2.75 billion</u> |
| TOTAL | \$6.95 billion |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 3 Terminal High Altitude Air Defense (THAAD) Fire Units with 147 THAAD missiles, 4 THAAD Radar Sets (3 tactical and one maintenance float), 6 THAAD Fire and Control Communication stations, and 9 THAAD Launchers. Also included are fire unit maintenance equipment, prime movers (trucks), generators, electrical power units, trailers, communications equipment, tools, test and maintenance equipment, repair and return, system integration and checkout, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.
- (iv) **Military Department:** Missile Defense Agency through Army (FAA)
- (v) **Prior Related Cases, if any:** None.
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Terminal High Altitude Air Defense System (THAAD)

The Government of the United Arab Emirates has requested a possible sale of 3 Terminal High Altitude Air Defense (THAAD) Fire Units with 147 THAAD missiles, 4 THAAD Radar Sets (3 tactical and one maintenance float), 6 THAAD Fire and Control Communication stations, and 9 THAAD Launchers. Also included are fire unit maintenance equipment, prime movers (trucks), generators, electrical power units, trailers, communications equipment, tools, test and maintenance equipment, repair and return, system integration and checkout, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements. The estimated cost is \$6.95 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region, and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing this weapon system into its armed forces. The proposed sale of this weapon system will not affect the basic military balance in the region.

The principal contractors are Lockheed Martin Space Systems Corporation in Sunnyvale, CA and the sub-contractor is Raytheon Corporation in Andover, MA.

The purchaser requested offsets; however, at this time, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

The United Arab Emirates does not desire a government support presence in its country on an extended basis. A total of 66 contractor logistic support personnel are anticipated to be stationed in United Arab Emirates for extended periods. Additional training and major defense equipment personnel may be in the United Arab Emirates for short periods of time, not to exceed 24 months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-19**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The Terminal High Altitude Area Defense (THAAD) Ballistic Missile Defense System contains classified Confidential/Secret components and critical/sensitive technology. The THAAD Fire Unit a ground-based, forward-deployable terminal missile defense system, requested by the United Arab Emirates, represents significant technological advances. The THAAD System continues to hold a technology lead over other terminal ballistic missile systems.

2. THAAD is the first weapons system with both endo and exo atmospheric capability developed specifically to defend against ballistic missiles. The higher altitude and theater-wide protection offered by THAAD provides more protection of larger areas than lower-tier systems alone. THAAD is designed to defend against short, medium, and intermediate range ballistic missiles. The THAAD system consists of four major components: Fire Control/Communications, Radar, Truck-mounted Launchers, and Interceptors (eight per missile round pallet).

3. The THAAD Ballistic Missile Defense System sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to certain critical components. Information on operational effectiveness with respect to countermeasures, low observable technologies, select software documentation and test data are classified up to and including Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23337 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-26]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCAIDBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

SEP 08 2008

**In reply refer to:
USP002191-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost \$737 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-26

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** United Arab Emirates
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$460 million |
| Other | <u>\$277 million</u> |
| TOTAL | \$737 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 78 complete AVENGER fire units including Vehicle Mounted Stinger Launch Platform (VMSLP) fire units (72 Tactical and 6 floats); 780 STINGER-Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles; 24 STINGER Block 1 Buy-to-Fly missiles; 78 Captive Flight Trainers, 16 AN/MPQ64-F1 SENTINEL Radars; 78 AN/VRC-92E Single Channel Ground and Airborne Radio System (SINCGARS) radios; 78 Enhanced Position Location Reporting System (EPLRS) Radios; 20 Integrated Fire Control Stations, S250 Shelters on High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), communication and support equipment, system integration and checkout, tools and test equipment, spare and repair parts, publications, installation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support.
- (iv) **Military Department:** Army (ZUI, ZUJ)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**United Arab Emirates – AVENGER and VMSLP Fire Units**

The Government of the United Arab Emirates has requested a possible sale of 78 complete AVENGER fire units including Vehicle Mounted Stinger Launch Platform (VMSLP) fire units (72 Tactical and 6 floats); 780 STINGER-Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles; 24 STINGER Block 1 Buy-to-Fly missiles; 78 Captive Flight Trainers, 16 AN/MPQ64-F1 SENTINEL Radars; 78 AN/VRC-92E Single Channel Ground and Airborne Radio System (SINCGARS) radios; 78 Enhanced Position Location Reporting System (EPLRS) Radios; 20 Integrated Fire Control Stations, S250 Shelters on HMMWVs, communication and support equipment, system integration and checkout, tools and test equipment, spare and repair parts, publications, installation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support. The estimated cost is \$737 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The Buy-to-Fly missiles will be used by the U.S. Government for acceptance testing of missile lots as necessary. Any unexpended Buy-to-Fly missiles will be delivered to the United Arab Emirates.

The proposed sale of these weapon systems will strengthen the effectiveness and interoperability of a trusted coalition partner, reduce the dependence on U.S. forces in the region, and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing these weapon systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

**Boeing Aerospace Company of Huntsville, Alabama
Raytheon Missile Systems of Tucson, Arizona
Thales Raytheon of Fullerton, California**

There are no offset agreements proposed in connection with this potential sale.

The United Arab Emirates does desire a government support presence in its country on an extended basis. An in-country field office comprised of three contractor Field Service Representatives and one U.S. Government personnel will be stationed in the United Arab Emirates for a period of five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-26**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. **The highest classification of the AVENGER hardware is Confidential and the data and information is Secret.**

a. **The AVENGER fire unit utilizes two Stinger Vehicle Universal Launchers to allow for the loading and firing of eight STINGER missiles. The primary critical technology associated with the AVENGER system is the STINGER missile utilized with the system. The Avenger control electronics unit integrates several inputs and outputs for the overall fire unit control. This could be used to develop evasive tactics. The AVENGER system utilizes a Confidential software Personal Computer Memory Card International Adapter card for upload of critical missile software orientation and kinematic range information to the platform. The laser range finder and Forward Looking Infra Red could compromise detailed design and fabrication information for these systems and their use with small missiles. The AVENGER/STINGER training equipment contains operational seeker hardware and firmware and must be protected by the same level of controls as tactical hardware.**

b. **The STINGER Block I International Missile System, hardware, software and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential. No man-portable grip stocks will be sold under these LOAs.**

c. **Missile System hardware and fire unit components contain sensitive/critical technologies. STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; missile software; optical coatings; ultraviolet sensors; semi-conductor detectors infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions;**

energetic materials formulation technology; energetic materials fabrication and loading technology; and warhead components seeker assembly. Information on vulnerability to electronic countermeasures and countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

d. The Sentinel radar (AN/MPQ-64) is a highly mobile phased-array radar that provides highly accurate 3 dimensional radar track data to using system via the Forward Area Air Defense Command, Control, and Intelligence (C2I) node. The Sentinel Export configuration AN/MPQ-64 being offered is a derivative of the US Army Sentinel Radar. The hardware is classified Confidential when the software is loaded into the hardware, and Unclassified with the software removed and purged.

e. The Sentinel consists of a radar-based sensor system with the M1097A2 as the prime mover and the MEP-813A Tactical Quite Generator as the power source. The sensor is a an advanced, battlefield capable X-Band air defense phased-array with an instrumented range of 40 kilometers with a rotating antenna providing 360 degree azimuth coverage for acquisition and tracking.

f. Sentinel has only one item currently designated Critical Program Information, (CPI) and that is the Sentinel software modules containing routines for electronic counter-countermeasures (ECCM) have been determined to be a CPI. However, several parameters and characteristics must be protected against unwanted exploitation. The upper and lower limits of the instantaneous bandwidth are classified Secret to protect Pre-planned Product Improvement (P3I) development. The upper and lower limits of target velocity processing are classified as Secret. The upper and lower limits of Doppler frequency processing are classified as Secret. Receiver sensitivity is classified Confidential. Receiver front-end bandwidth is classified as Confidential. Antenna gain pattern is classified as Confidential. Distribution of technical performance and system capabilities reports and data shall only be released up to the Confidential level. It is not possible to obtain the Sentinel wartime reserved frequencies by reverse engineering, testing, or analyzing the unclassified Sentinel end item.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23344 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCAIDBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 08 2008

In reply refer to:
USP001126-08

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-36, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost \$178 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-36**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Kuwait
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$167 million |
| Other | \$ <u>11 million</u> |
| TOTAL | \$178 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 120 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 78 LAU-127-B/A Launchers, 78 LAU-127-C/A Launchers, Captive Air Training Missiles, missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.
- (iv) **Military Department:** Air Force (YAB)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Kuwait – AIM-120C-7 AMRAAM Missiles**

The Government of Kuwait has requested a possible sale of 120 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 78 LAU-127-B/A Launchers, 78 LAU-127-C/A Launchers, Captive Air Training Missiles, missile containers, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government (USG) and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is \$178 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's capability to meet current and future threats of enemy air-to-air weapons. Kuwait will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Corporation, Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 10 U.S. Government and contractor representatives for one-week intervals twice annually to participate in training, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-36**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination. Anti-tempering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23345 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-62]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-62 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

**SEP 08 2008
In reply refer to:
USP005974-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-62, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost \$164 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-62

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** Israel
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|----------------------------|
| Major Defense Equipment* | \$163 million |
| Other | <u>\$ 1 million</u> |
| TOTAL | \$164 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 3 PATRIOT System Configuration 3 Modification kits to upgrade 3 PATRIOT fire units to Radar Enhancement Phase 3 (REP-3) and Classification, Discrimination and Identification Phase 3 (CDI-3). Non-MDE includes: communication support equipment, tools and test equipment, integration and checkout, spares and repair parts, installation and training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.
- (iv) **Military Department:** Army (XDF)
- (v) **Prior Related Cases, if any:** FMS Case YCE - \$96M - 17May91
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Israel – Patriot Missile Fire Unit Upgrades**

The Government of Israel has requested a possible sale of 3 PATRIOT System Configuration 3 Modification kits to upgrade 3 PATRIOT fire units to Radar Enhancement Phase 3 (REP-3) and Classification, Discrimination and Identification Phase 3 (CDI-3). Non-MDE includes: communication support equipment, tools and test equipment, integration and checkout, spares and repair parts, installation and training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is \$164 million.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support Israeli commitment to peace with other regional Arab countries, enhance regional stability and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interest to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel will have no difficulty absorbing this system into its armed forces. The proposed sale will not affect the basic military balance in the region.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

The prime contractor will be Raytheon Corporation, Andover, MA. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-62**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The PATRIOT Air Defense System contains critical/sensitive technology and classified Confidential components. The Configuration 3 upgrade represents significant technological advances for the existing PATRIOT system capabilities. The Configuration 3 sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development, and/or manufacturing data related to certain critical components. Information on operational effectiveness with respect to electronic countermeasures and counter-counter measures, low observable technologies, select software documentation and test data are classified up to and including Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23348 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-64]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-64 with attached transmittal, and policy justification.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

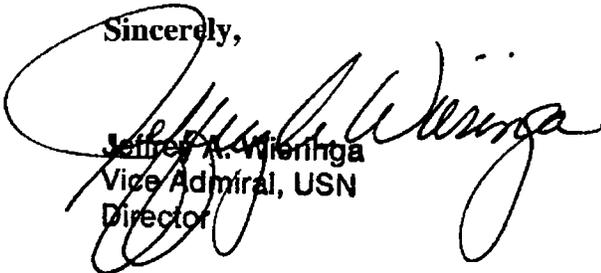
SEP 08 2008
In reply refer to:
USP005980-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-64, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost \$69 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,


Jeffrey A. Wisniewski
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-64**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Egypt
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$51 million |
| Other | <u>\$18 million</u> |
| TOTAL | \$69 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 15,500 120MM High Explosive with Tracer (HE-T) Cartridges, 200 Dummy 120MM HE-T Cartridges, and 100 Cutaway 120MM HE-T, field implementation, testing, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U. S. Government logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Army (VAX)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Egypt – 120MM High Explosive with Tracer (HE-T) Cartridges**

The Government of Egypt has requested a possible sale of 15,500 120MM High Explosive with Tracer (HE-T) Cartridges, 200 Dummy 120MM HE-T Cartridges, and 100 Cutaway 120MM HE-T, field implementation, testing, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U. S. Government logistics personnel services, and other related elements of logistics support. The estimated cost is \$69 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt needs these 120MM HE-T cartridges to maintain a strategic munitions inventory for its M1A1 tank fleet. Egypt will have no difficulty absorbing these additional munitions into its armed forces since it already has this type of munition in its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractor is General Dynamics Ordnance Tactical Systems of St. Petersburg, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U. S. Government or contractor personnel in Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8-23349 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-71]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-71 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

SEP 08 2008

**In reply refer to:
USP007912-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-71, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost \$170 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

**Jeffrey A. Wisniewski
Vice Admiral, USN
Director**

A handwritten signature in black ink, appearing to read "Jeffrey A. Wisniewski", written over the typed name and title.

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-71**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** India
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 65 million |
| Other | <u>\$105 million</u> |
| TOTAL | \$170 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 20 AGM-84L HARPOON Block II missiles; 4 ATM-84L HARPOON Block II Exercise missiles; containers; training devices; spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support.
- (iv) **Military Department:** Navy (AAL)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**India - HARPOON Block II Missiles**

The Government of India has requested a possible sale of 20 AGM-84L HARPOON Block II missiles; 4 ATM-84L HARPOON Block II Exercise missiles; containers; training devices; spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support. The estimated cost is \$170 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important partner and to strengthen the U.S.-India strategic relationship, which continues to be an important force for political stability, peace, and economic progress in South Asia.

India intends to use the HARPOON missile to modernize its Air Force Anti-Surface Warfare mission capabilities and improve its naval operational flexibility. The missiles will assist the Indian Navy to develop and enhance standardization and operational ability with the United States. India will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to India permanently. There may be U.S. Government or contractor personnel in country on a temporary basis in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-71**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AGM-84L HARPOON Block II missile is an air-launched Anti-Surface Warfare weapon will provide the Indian naval forces with capabilities to engage targets in both the “blue water” regions and the littorals of the world. The AGM-84L Block II HARPOON missile, including publications, documentation, operations, supply, maintenance, and training, is Confidential.

2. The AGM-84L incorporates components, software, and technical design information that are considered sensitive. The following HARPOON components being conveyed by the proposed sale that are classified Confidential include:

- a. Radar seeker**
- b. Global Positioning System/Inertial Navigation System (GPS/INS)**
- c. Operational Flight Program (OFP) software**
- d. Missile operational characteristics and performance data**
- e. Guidance Control Unit**

These elements are essential to the ability of the HARPOON missile to selectively engage hostile targets under a wide range of operational, tactical, and environmental conditions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23351 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-72]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-72 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

**SEP 08 2008
In reply refer to:
USP007968-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-72, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost \$319 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-72

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Egypt
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$318 million |
| Other | <u>\$ 1 million</u> |
| TOTAL | \$319 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 6,900 TOW 2A anti-armor guided missiles, plus 28 fly-to-buy missiles. Also included: containers, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.
- (iv) **Military Department:** Army (VBG)
- (v) **Prior Related Cases, if any:** numerous cases dating back to 1988
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 08 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Egypt - TOW 2A Anti-Armor Guided Missiles**

The Government of Egypt has requested a possible sale of 6,900 TOW 2A anti-armor guided missiles, plus 28 fly-to-buy missiles. Also included: containers, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.. The estimated cost is \$319 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt needs these TOW 2A missiles to replenish its aging inventory. Egypt will have no difficulty absorbing these additional missiles into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

The prime contractor will be Raytheon Company, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-72**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The TOW 2 weapon system, including TOW 2A anti-armor guided missiles, is **Unclassified**. The TOW 2A missile and launcher, digital missile guidance set, optical sight, and night sight contain **highly sensitive technology**. Some performance characteristics and system capabilities, which could be derived from the use of this equipment, are classified **Secret**.

2. If a technologically capable adversary were to obtain knowledge of this **highly sensitive equipment**, the technology could be easily absorbed, thereby permitting **development of countermeasures which could reduce overall weapon system effectiveness**.

[FR Doc. E8-23352 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-75]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCAIDBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-75 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

**SEP 08 2008
In reply refer to:
USP008277-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-75, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost \$598 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-75**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser: Saudi Arabia**
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$350 million |
| Other | <u>\$248 million</u> |
| TOTAL | \$598 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 AH-64D Block II APACHE Longbow Helicopters, 30 T700-GE-701D Engines, 12 Modernized Targeting Acquisition and Designation Systems/Pilot Night Vision Sensors, 4 each AN/APG-78 Fire Control Radars and AN/APR-48 Radar Frequency Interferometers, 28 M299 HELLFIRE Longbow Missile Launchers, 12 AN/ALQ-144C(V)3 Infrared Jammers, 12 AN/APR-39A(V)4 Radar Signal Detecting Sets, 12 AN/ALQ-136(V)5 Radar Jammers, 12 AAR-57(V)3/5 Common Missile Warning Systems, 36 Improved Countermeasures Dispensers, and 12 AN/AVR-2B Laser Warning Sets. Also included: composite horizontal stabilators, Integrated Helmet and Display Sight Systems, repair and return, transportation, depot maintenance, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support.**
- (iv) **Military Department: Army (WAB)**
- (v) **Prior Related Cases, if any: none**
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.**
- (viii) **Date Report Delivered to Congress: SEP 08 2008**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Saudi Arabia – AH-64D APACHE Longbow Helicopters**

The Government of Saudi Arabia has requested a possible sale of 12 AH-64D Block II APACHE Longbow Helicopters, 30 T700-GE-701D Engines, 12 Modernized Targeting Acquisition and Designation Systems/Pilot Night Vision Sensors, 4 each AN/APG-78 Fire Control Radars and AN/APR-48 Radar Frequency Interferometers, 28 M299 HELLFIRE Longbow Missile Launchers, 12 AN/ALQ-144C(V)3 Infrared Jammers, 12 AN/APR-39A(V)4 Radar Signal Detecting Sets, 12 AN/ALQ-136(V)5 Radar Jammers, 12 AAR-57(V)3/5 Common Missile Warning Systems, 36 Improved Countermeasures Dispensers, and 12 AN/AVR-2B Laser Warning Sets. Also included: composite horizontal stabilators, Integrated Helmet and Display Sight Systems, repair and return, transportation, depot maintenance, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support. The estimated cost is \$598 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia will use the AH-64D for its national security, and protecting its borders and oil infrastructure. The aircraft will provide the Saudi military more advanced targeting and engagement capabilities. The proposed sale will provide for the defense of vital installations and will provide close air support for the Saudi military ground forces. This sale also will increase the Royal Saudi Air Force (RSAF) APACHE sustainability and interoperability with the U.S. Air Force, the Gulf Cooperation Council countries, and other coalition air forces. Saudi Arabia will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors will be Boeing Corporation of Mesa, Arizona, General Electric Company of Fairfield, Connecticut, and Lockheed Martin Corporation of Palmdale, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale requires the assignment of one Contractor Field Service representative (CFSR) to Saudi Arabia for two years for the airframe and electrical systems, and another CFSR for two years for the Fire Control Radar. Also, this program will require U.S. government and contractor personnel participation in annual, one-week Program Management Reviews in Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-75**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The AH-64D APACHE Attack Helicopter includes the following sensitive and/or classified (up to and including Secret) components:

a. AN/APG-78 Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets in visual conditions that preclude the use of visual or infrared imaging systems. Hardware and releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software proposed for release, will not, in itself, facilitate reverse engineering.

b. AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APG-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as for making decisions on FCR target prioritization. Hardware is classified Confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly, Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (MTADS/PNVS) provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

d. The Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate counter-measures. The CMWS consists of an Electronic Control Unit (ECU) and four to six Electro-Optic Missile Sensors (EOMSs). The ECU provides the central processing and integrates the sub-components of the CMWS and processes information obtained from the EOMSs. The ECU hardware is Unclassified, and the software is Secret. The EOMSs are passive staring detectors operating in the UV electromagnetic spectrum. They detect UV radiation generated from the plume of an in-flight missile and transmit the information to the EUC. The ECU hardware is Unclassified and the software is Unclassified.

e. The AN/ALQ-144A(V)3 Infrared Jammer is an active, continuous operating, omni-directional, electrically fired infrared (IR) jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified confidential and releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of counter countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

f. The AN/APR-39A(V)4 Radar Signal Detecting Set is a system, that provides warning of a radar directed air defense threat and allow appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

g. The AN/ALQ-136(V)5 Radar Jammer is an automatic radar jammer that analyzes various incoming radar signals. When threat signals are identified and verified, jamming automatically begins and continues until the threat radar breaks lock. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret; releasable technical data (technical performance) is classified Secret.

h. The AN/AVR-2B Laser Warning Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

i. The Integrated Helmet Display Sight System (IHDS) is an enhanced version of its predecessor. It will provide improved operational performance primarily in resolution allowing greater utilization of the M-TADS/M-PNVS performance enhancements. The hardware is Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23353 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-79]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-79 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



**DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800**

SEP 08 2008

**In reply refer to:
USP008297-08**

**The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501**

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-79, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost \$121 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

**Jeffrey A. Wieringa
Vice Admiral, USN
Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

Same ltr to:

**House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations**

**Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations**

Transmittal No. 08-79

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

- (i) **Prospective Purchaser: United Arab Emirates**
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$ 80 million |
| Other | \$ <u>41 million</u> |
| TOTAL | \$121 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 4 PATRIOT Advanced Capability (PAC-3) Intercept Aerial Missiles with containers, 19 MIM-104D Guided Enhanced Missiles-T with containers (GEM-T), 5 Anti-Tactical Missiles, and 5 PATRIOT Digital Missiles. These missiles are for lot validation and testing of the PAC-3 missiles notified for sale in Transmittal Number 08-17. Also included: AN/GRC-245 Radios, Single Channel Ground and Airborne Radio Systems (SINGARS Export), power generation equipment, electric power plant, trailers, communication and support equipment, publications, spare and repair parts, repair and return, United States Government and contractor technical assistance and other related elements of logistics support.**
- (iv) **Military Department: Army (ZUG, Amd #1)**
- (v) **Prior Related Cases, if any: FMS case ZUG-\$6.4B-pending**
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**
- (viii) **Date Report Delivered to Congress: SEP 0 8 2008**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – PATRIOT Advanced Capability-3 Missile System

The Government of the United Arab Emirates has requested a possible sale of 4 PATRIOT Advanced Capability (PAC-3) Intercept Aerial Missiles with containers, 19 MIM-104D Guided Enhanced Missiles-T with containers (GEM-T), 5 Anti-Tactical Missiles, and 5 PATRIOT Digital Missiles. These missiles are for lot validation and testing of the PAC-3 missiles notified for sale in Transmittal Number 08-17. Also included: AN/GRC-245 Radios, Single Channel Ground and Airborne Radio Systems (SINCGARS Export), power generation equipment, electric power plant, trailers, communication and support equipment, publications, spare and repair parts, repair and return, United States Government and contractor technical assistance and other related elements of logistics support. The estimated cost is \$121 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing these additional munitions into its armed forces. The proposed sale of these weapon systems will not affect the basic military balance in the region.

The principal contractors are the Raytheon Corporation in Andover, Massachusetts; and Lockheed-Martin in Dallas, Texas. The purchaser intends to request offsets; however, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will require the assignment of U.S. Government or contractor representatives to the United Arab Emirates. An in-country field office will likely be manned by one to four U.S. Government personnel who will remain in country for an undetermined length of time. A total of 65 contractor personnel are expected to be in country for an extended period for training purposes.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-79**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The PATRIOT Air Defense System contains components and critical/sensitive technology that is classified Confidential. The PATRIOT Advanced Capability-3 (PAC-3) Configuration 3 Missile System is classified Secret. With the incorporation of the PAC-3 Missile, the PATRIOT System will continue to hold a significant technology lead over other surface-to-air missile systems in the world.

a. The PATRIOT (Phased Array Tracking Intercept of Target) Missile system is a long range, lower tier, all altitude, all weather air defense system fielded to counter advanced aircraft, Tactical Ballistic Missiles (TBMs), and Cruise Missiles. The PATRIOT system has multiple engagement capability to counter saturation air attacks in an advance electronic countermeasures environment. The PATRIOT Advanced Capability-3 (PAC-3) Configuration 3 upgrade program incorporates significant upgrades to the phased array radar and Engagement Control Station and adds the new PAC-3 Missile.

b. A PATRIOT fire unit consists of a phased array Radar Set (RS), Engagement Control Station (ECS), an Electric Power Plant (EPP), an Antenna Mast Group (AMG), a Communications Relay Group (CRG), and Launching Stations (LS). The Phased Array Radar provides all tactical functions of airspace surveillance, target detection, identification, classification, tracking, missile guidance and engagement support. The ESC provides the human interface for command and control of operations. The ECS contains weapons control computer, human-machine interface and data and communication terminals. The EPP provides prime power for the ECS and RS. It consists of two 150Kw 400 Hz diesel-driven generators interconnected through power distribution units. The Antenna Mast Group (AMG) is a mobile antenna system associated with UHF communication equipment. The AMG has the capacity to extend the mast with pneumatic extension to heights of 94 feet. The Communications Relay Group (CRG) provides a radio relay (UHF) for the PATRIOT Battalions and interfaces directly with co-located AMGs. The Launching Station (LS) is a remotely controlled, self-contained unit that can transport, point, and launch the PATRIOT Missiles.

2. The PAC-3 Missile sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to the following components:

- a. PAC-3 Missile Guidance Processor Unit**
- b. PAC-3 Missile software**
- c. PAC-3 Missile associated ground equipment software**

Information on vulnerability to electronic countermeasures and counter-counter measures, system performance capabilities and effectiveness, survivability and vulnerability data, PAC-3 Missile seeker capabilities, non-cooperative target recognition, low observable technologies, select software documentation and test data are classified up to Secret. Information on operational effectiveness with respect to electronic countermeasures and counter-counter measures, low observable technologies, select software documentation and test data are classified up to and including Secret.

3. The Guidance Enhanced Missile (GEM) is an enhancement to the PAC-2 Missile that provides improved system effectiveness and lethality against both high speed Tactical Ballistic Missiles (TBMs) and also reduced radar cross section (RCS) and low-flying air breathing targets (ABTs). The GEM hardware change consists of modifying the seeker assembly and radio frequency (RF) receiver by incorporating a low noise C-Band amplifier in the receiver's front-end to improve signal sensitivity, which provides an improved signal to noise ratio. This results in increased acquisition range and longer terminal guidance periods against very fast and/or reduced RCS targets. The GEM improvement reduces boresight error, miss distance, and reaction time. The GEM-T Missile incorporates a new fuze design to further improve reaction time.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-23354 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-82]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-82 with attached transmittal, policy justification, and Sensitivity of Technology.

September 25, 2008.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 08 2008
In reply refer to:
USP008755-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-82, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost \$77 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Wieringa".

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House

Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate

Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-82**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

- (i) **Prospective Purchaser:** Israel
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|-----------------------------|
| Major Defense Equipment* | \$ 66 million |
| Other | <u>\$ 11 million</u> |
| TOTAL | \$ 77 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 1,000 GBU-39 Small Diameter Bombs (SDB1), 150 BRU-61/A SDB1 Mounting Carriages, 30 Guided Test Vehicles, 2 BRU-61/A SDB Instrumented Carriages, 7 Jettison Test Vehicles, 1 Separation Test Vehicle, 2 Reliability and Assessment Vehicles, 12 Common Munitions BIT and Reprogramming Equipment with Test Equipment and Adapters, 3 SDB1 Weapons Simulators, and 2 Load Crew Trainers. Also includes containers, flight test integration, spare and repair parts, support equipment, personnel training and equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.
- (iv) **Military Department:** Air Force (QEG)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Israel – GBU-39 Small Diameter Bombs**

The Government of the Israel has requested a possible sale of 1,000 GBU-39 Small Diameter Bombs (SDB1), 150 BRU-61/A SDB1 Mounting Carriages, 30 Guided Test Vehicles, 2 BRU-61/A SDB Instrumented Carriages, 7 Jettison Test Vehicles, 1 Separation Test Vehicle, 2 Reliability and Assessment Vehicles, 12 Common Munitions BIT and Reprogramming Equipment with Test Equipment and Adapters, 3 SDB1 Weapons Simulators, and 2 Load Crew Trainers. Also includes containers, flight test integration, spare and repair parts, support equipment, personnel training and equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is \$77 million.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support Israel's commitment to peace with other regional Arab countries, enhance regional stability and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interests to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel will have no difficulty absorbing these additional bombs into its armed forces. The proposed sale will not affect the basic military balance in the region.

The principal contractor will be Boeing Integrated Defense Systems, Boeing Corporation, St. Louis, MO. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will involve multiple trips to Israel by U.S. Government and contractor representatives for one-week intervals, for approximately three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-82**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

- 1. The GBU-39 Small Diameter Bomb (SDB 1) is a new 250-pound guided bomb, designed to provide high precision and effective stand-off range when launched from fighter bombers or unmanned platforms such as the F-15, the new F-35 Joint Strike Fighter and unmanned combat vehicles. The SDB1 enables the aircraft to carry four weapons on every precision-guided missile weapon station using a four-place carriage, the BRU-61/A. The weapon is equipped with a Global Positioning System-aided inertial navigation system. The SDB1 carries approximately 50 lbs of high explosive, yet its design provides the same penetration capability as the 2000 lb BLU-109. It is designed to destroy a variety of targets from ranges of 40 nautical miles, such as fuel depots and bunkers, and penetrate over 1.2 meters of steel reinforced concrete while inflicting minimum collateral damage.**
- 2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

[FR Doc. E8-23355 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Revision of the DoD 6055.09-STD, "Department of Defense Ammunition and Explosives Safety Standards"

AGENCY: Department of Defense.

ACTION: Notice of change.

SUMMARY: The Chairman, Department of Defense Explosives Safety Board (DDESB), is today announcing several changes to DoD 6055.9-STD, dated 5 October 2004. The DDESB is republishing the Standard (now DoD 6055.09-STD) with changes deliberated by the Voting Board members from October 5, 2004 to July 18, 2005.

The DDESB is taking this action pursuant to its statutory authority as set forth in Title 10, United States Code, Section 172 (10 U.S.C. 172) and DoD Directive 6055.9E, "Explosives Safety Management and the Explosives Safety Board (DDESB)," August 19, 2005. The Standard is applicable to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

Through DoD 6055.09-STD, the DDESB establishes minimum explosives safety requirements for storing and handling ammunition and explosives. Copies of the revised Standard dated February 29, 2008, may be downloaded from the DoD Directives Program Web site at <http://www.dtic.mil/whs/directives>.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this Standard, contact Dr. Jerry M. Ward, phone: (703) 325-2525; e-mail: Jerry.Ward@ddesb.osd.mil; DDESB, 2461 Eisenhower Avenue, Room 856C, Alexandria, VA 22331-0600.

SUPPLEMENTARY INFORMATION: Dating back to 1928 when Congress directed the Secretaries of the military departments to establish a joint board of officers to "keep informed on stored supplies of ammunition and components thereof * * *, with particular regard to keeping those supplies properly dispersed and stored

and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations," the DDESB (formerly known as the Ammunition Safety Board) has periodically revised or updated the Standard based on new scientific or technical information and explosives safety experience. The implementation of a change to DoD 6055.09-STD depends on formal publication of a change to DoD 6055.09-STD. In order to ensure compliance, the DoD Components modify their implementing procedures and standards accordingly.

This revision to the 5 October 2004 version of DoD 6055.09-STD incorporates, as appropriate, recommendations made by Voting Board members at the 327th DDESB meeting held on December 14, 2004, and the 328th DDESB meeting held on July 18, 2005, and included in their replies to DDESB vote by correspondence memoranda dated March 11, 2005 and June 30, 2005.

The changes included herein address the following:

- Replaces Chapter 12 "Real Property Contaminated with Ammunition, Explosives or Chemical Agents" with completely revised Chapter 12 "Real Property Known or Suspected to Contain Munitions and Explosives of Concern and Chemical Agents" that includes explosives safety standards for the identification and control of areas known or suspected to contain Munitions and Explosives of Concern (MEC) or Chemical Agents (CA), addresses explosives and CA safety aspects of response actions as well as special considerations, provides criteria for required safety submissions as well as for amendments and corrections to these submissions, provides criteria for after action reports, provides criteria for transfer of real property outside of DoD control

- Relocates criteria for the termination of use of facilities storing ammunition and explosives from the previous Chapter 12 to Chapter 1
- Includes a new Chapter 15 "Unexploded Ordnance (UXO)" that provides criteria for the disposition of UXO, addresses special considerations, provides criteria for access to areas known or suspected to contain UXO and for identification and control of such areas, provides minimum separation distances for UXO, addresses other considerations

- Includes a new Chapter 16 "Material Potentially Presenting an Explosives Hazard (MPPEH)" that provides explosives safety standards for MPPEH

- Expands Glossary to include new terms used in the revised Chapter 12, and new Chapters 15 and 16
- Removes the exception for quantity-distance (QD) application to roll-on and roll-off ammunition and explosives operations
 - Establishes criteria for the siting of and authorized operations at reduced QD magazines
 - Expands the criteria for application of no QD to ammunition and explosives stored in ships' magazines and intended for the service of shipboard armament or aircraft

In adopting these changes, the Chairman, DDESB has determined that the Standards, as changed, are at least as protective as the previous Standards.

Dated: September 29, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E8-23522 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of Upcoming Meeting of the Defense Advisory Board for Employer Support of the Guard and Reserve (DAB-ESGR)

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DAB-ESGR. This meeting will focus on the response to a recommendation to create a single point communication system to notify employers of Guard and Reserve members. This meeting is open to the public.

DATES: November 19, 2008 (0830-1630 hours).

ADDRESSES: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington VA 22202.

The public is asked to pre-register three weeks in advance of the meeting due to security and or seating limitations (*see* below information for pre-registration).

FOR FURTHER INFORMATION: Interested attendees may contact MAJ Elaine M. Gullotta at 703-696-1385 ext 540, or e-mail at elaine.gullotta@us.army.mil.

SUPPLEMENTARY INFORMATION:

Agenda

0830 Convene (Mr. James G. Rebholz, Chairman).
0835 Oath of Office (Mr. Frank Wilson).

- 0840 Minutes approval, Due Outs from last meeting and subcommittee update (Mr. James G. Rebholz, Chairman).
- 0850 Discussion, Response to Board Recommendation (Mr. James G. Rebholz, Chairman).
- 1030 Break.
- 1045 Honorable Thomas F. Hall, Assistant Secretary of Defense Reserve Affairs.
- 1200 Lunch.
- 1330 Public Comment.
- 1340 Discussion of Public Comment.
- 1400 Review and discussion of DAB Recruitment Efforts, way ahead (Mr. James G. Rebholz, Chairman).
- 1515 Break.
- 1545 Summary of Proceedings, Administrative Announcements, Subcommittee Due Outs.
- 1615 Awards, Photos.
- 1630 Adjourn.

(a) Background

The purpose of the Board is to provide independent advice and recommendations to the Secretary of Defense on matters that arise from the military obligation of members of the National Guard and Reserve members and the impact on their civilian employment.

(b) Availability of Materials for the Meeting

Please see the Federal Advisory Committee Act website for copies of any available materials, including draft agendas for the meeting and background information. (http://www.fido.gov/facadatabase/form_meetings.asp).

(c) Procedures for Providing Public Comments

It is the policy of the DAB-ESGR to accept written public comments of any length, and to accommodate oral public comments whenever possible. To facilitate Board discussion at its meetings, the Board may not accept oral comments at all meetings. The Board Staff expect that public statements presented at Board meetings will be focused on the Board's statutory charter and any working group topics.

Oral Comments: Speaking times will be confirmed by Board staff on a "first-come/first-served" basis. To accommodate as many speakers as possible, oral public comments must be no longer than 3 minutes. Because the Board members may ask questions, reserved times will be approximate. Interested parties must contact MAJ Elaine Gullotta in writing (via mail or e-mail) at least three weeks prior to the meeting.

Written Comments: Written comments should be received by the Board staff at

least three weeks prior to the meeting date so that the comments may be made available to the Board for consideration prior to the meeting. Written comments should be supplied MAJ Elaine Gullotta in one of the following formats (Word, PDF) via mail or email at least two weeks prior to the meeting. Please Note: 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 Federal Advisory Committee Web site.

Written comments may be sent to: Employer Support of the Guard and Reserve, 1555 Wilson Blvd, Suite 200, Arlington, VA 22209, *Attention:* MAJ Elaine Gullotta.

Dated: September 29, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E8-23513 Filed 10-3-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for a Permit Application for the Sanitation Districts of Los Angeles County's (Sanitation Districts) Clearwater Program in Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, 40 CFR 1508.22, and 33 CFR Parts 230 and 325, and in conjunction with the Sanitation Districts, the U.S. Army Corps of Engineers (Corps) is announcing its intent to prepare a DEIS/EIR for the Clearwater Program. The Clearwater Program is a strategic planning initiative to identify wastewater conveyance, wastewater treatment, effluent management, solids processing, and biosolids management needs for the Sanitation Districts' Joint Outfall System through the year 2050. The Clearwater Program will entail the preparation of a new Master Facilities Plan (MFP), which will guide the management, and upgrade/development of the Sanitation Districts' infrastructure. A major component of the MFP is the

construction of a new ocean outfall structure extending from the coastline in the vicinity of White Point, Point Fermin, or the Port of Los Angeles up to approximately 7 miles seaward of San Pedro Bay in the Pacific Ocean. The construction of the structure would entail discharge of dredged and fill material in waters of the United States, work in navigable waters of the United States, and potentially the transport of dredged material for ocean disposal. Accordingly, the Sanitation Districts intend to submit a Department of Army application pursuant to Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act (RHA), and if necessary Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA).

For Additional Information Contact: Kenneth Wong, Project Manager, at (213) 452-3290 (kenneth.wong@usace.army.mil), U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053-2325.

SUPPLEMENTARY INFORMATION:

1. Project Purpose and Need: The Sanitation Districts currently utilize two tunnels and four ocean outfall structures to convey effluent from their Joint Water Pollution Control Plant (JWPCP) in the city of Carson to the Pacific Ocean. The two tunnels were constructed in 1937 and 1958 and have not been inspected in nearly 50 years. Inspection of the tunnels is not possible due to their overall length, limited access, lack of separation between the tunnels, and the overall flow through the tunnels. The project need is to inspect and upgrade aging infrastructure, and to accommodate the projected increase in wastewater flows. The project purpose is to improve existing infrastructure and increase wastewater treatment capacity to accommodate estimated 2050 flows, while complying with all applicable water quality standards. As a part of planned infrastructure improvements, the Sanitation Districts propose to construct a new tunnel and ocean outfall structure.

The new ocean outfall would be composed of onshore and offshore components. The onshore component would entail construction of a 4- to 7-mile long underground tunnel approximately up to 200 feet below ground from the JWPCP to one of three areas (White Point, Point Fermin, or the Port of Los Angeles) from where the tunnel will make the onshore-to-offshore transition. Once offshore, the tunnel may extend up to 7 miles seaward and connect to a diffuser via a riser. Alternatively, once offshore, the

tunnel may transition to the ocean floor via a riser to seafloor pipeline(s), which would connect to the diffuser structure. Depending on the location of the diffuser, the seafloor pipeline(s) may extend up to 7 miles offshore.

2. *Proposed Action:* The offshore component of the new ocean outfall could entail excavation of an approximately 105-foot-wide trench up to 7 miles long requiring dredging of approximately 950,000 cubic yards of sediment. Once excavated, outfall pipe(s), diffuser pipes, bedding, ballast, dredged material, and armor stone would be discharged into the trench. Dredged material not used for trench backfill could be designated for ocean disposal or beach nourishment depending on sediment chemistry.

Dredging, pipe laying, trenching, and other construction activities within the Pacific Ocean, a navigable water of the United States, would be subject to Section 10 of the Rivers and Harbors Act. The discharge of dredged and fill materials associated with pipe laying activities in the Pacific Ocean, a water of the United States, would also be subject to Section 404 of the Clean Water Act. The transportation and discharge of dredged material for the purpose of ocean disposal, if required, would be subject to Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The geographic jurisdiction of Section 10 RHA and Section 404 CWA extends 3 geographic miles seaward (33 CFR Part 329.12(a)). However, a wider zone of geographic jurisdiction out to the Outer Continental Shelf (200 miles seaward) is recognized when a project entails placement of devices on the seabed (33 CFR 322.3(b)). Because the project entails placement of a pipeline up to 7 miles on the seabed, the entire length of the project is subject to both Section 10 RHA and Section 404 CWA jurisdictions.

3. *Alternatives Considered:* The feasibility of several alternatives is being considered and will be addressed in the DEIS/EIR. Those considered feasible will be analyzed in equal detail to the Proposed Action. Alternatives for the proposed project would evaluate alternate onshore and offshore tunnel alignments; alternate tunnel shaft site locations; and alternate diffuser locations. Furthermore, alternate offshore project designs would be evaluated. One design would extend the tunnel up to 7 miles offshore and connect to the diffuser via a riser. Alternatively, the tunnel may transition via a riser to seafloor pipeline(s), which would connect to a diffuser. Depending on the location of the diffuser, the

seafloor pipeline(s) may extend up to 7 miles offshore. The No Federal Action Baseline Alternative would result in implementation of the recommended projects within the MFP without the new ocean outfall and other infrastructure upgrades that require Department of Army permits. Under the No Action Alternative, there would be no upgrade and development of the Sanitation Districts' infrastructure, including the new ocean outfall, to accommodate wastewater management needs through 2050. These alternatives will be further formulated and developed during the scoping process. Additional alternatives that may be developed during the scoping process will also be considered in the DEIS/EIR.

5. *Scoping Process:* The Corps' scoping process for the DEIS/EIR will involve soliciting written comments and a public meeting. Potential significant issues to be addressed in the DEIS/EIR include aesthetics; air quality; biological resources; cultural resources; geology; hydrology; hazards and hazardous materials; water quality; public health; land use and planning; marine environment (marine hydrology, water quality, public health, and biological resources); noise; population, employment, and housing/ environmental justice; public services; recreation; transportation and traffic; utilities, service systems, and energy; and cumulative and growth-inducing impacts. Additional environmental impacts may be identified during the scoping process. Furthermore, the DEIS/EIR will assess the consistency of the Proposed Action with the Coastal Zone Management Act and potential water quality impacts pursuant to Section 401 of the Clean Water Act. Comments are invited from the public and affected agencies, including, but not limited to, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Coast Guard, California Department of Fish and Game, California State Water Resources Control Board, California State Lands Commission, California Coastal Commission, and the city of Los Angeles.

Public Meeting: A public scoping meeting to receive input on the scope of the DEIS/EIR will be conducted on Thursday, November 6, 2008 at 6:30 p.m. at Crowne Plaza Hotel, 601 South Palos Verdes Street, San Pedro, California. If you have any questions regarding the meeting, please contact Steven Highter, Supervising Engineer, Sanitation Districts, at shighter@lacsdc.org.

6. *Availability of the Draft EIS:* The DEIS/EIR is expected to be published

and circulated in fall 2009, and a public meeting will be held after its publication.

Dated: September 23, 2008.

David J. Castanon,

Chief, Regulatory Division Corps of Engineers.

[FR Doc. E8-23528 Filed 10-3-08; 8:45 am]

BILLING CODE 3710-KF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, 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 5, 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 IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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 30, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Teacher Follow-Up Survey.

Frequency: Other: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4,910.

Burden Hours: 1,831.

Abstract: The Teacher Follow Up Survey is a follow-up to the School and Staffing Survey and it is a survey of teachers with the main purpose of providing a one year teacher attrition rate.

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 3856. 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. E8-23512 Filed 10-3-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of

information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will enable the DOE to develop its part of the U.S. Government Declaration to the International Atomic Energy Agency (IAEA) under the Additional Protocol (AP) to the U.S.-IAEA International Safeguards Agreement.

DATES: Comments regarding this collection must be received on or before November 5, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer as soon as possible of your intention to make a submission. The Desk Officer's telephone number is 202-395-4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503, and to JoAnna Sellen, Office of International Regimes and Agreements (NA-243), National Nuclear Security Administration, 1000 Independence Ave., SW., Washington, DC 20585 or by fax at 202-586-1348, or by e-mail at Joanna.Sellen@nnsa.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to JoAnna Sellen.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* {"New"}; (2) *Information Collection Request Title:* U.S. Declaration under Protocol Additional to the U.S.-IAEA Safeguards Agreement ("Additional Protocol"); (3) *Type of Request:* {New collection.} (4) *Purpose:* Develop Information for Inclusion by the Department of Energy in the United States Declaration to the International Atomic Energy Agency (IAEA) under the Additional Protocol to the U.S.-IAEA International Safeguards Agreement.

This proposed collection of information is pursuant to implementing the provisions of the Protocol Additional to the Agreement Between the United States of America and the IAEA for the Application of Safeguards in the United States of America (the "Additional Protocol" or AP). The Additional Protocol is a supplement to the existing U.S.-IAEA Safeguards Agreement, which entered into force in 1980, and the U.S. AP will become part of the Safeguards Agreement once the U.S. AP enters into force. The United States signed the U.S. AP in 1998, President Bush submitted it

to the Senate on May 9, 2002 for the Senate's advice and consent to ratification, and the Senate approved a resolution providing such advice and consent on March 31, 2004. Legislation to implement the U.S. AP was enacted on December 18, 2006, and is codified at 22 U.S.C. 1801, *et seq.* Entry into force of the U.S. AP will take place when the President deposits the instrument of ratification with the IAEA.

The Department of Energy (DOE) is the Lead Agency for implementing the Additional Protocol at locations owned, operated, or leased by or for DOE, including Nuclear Regulatory Commission (NRC)-licensed or certified activities on DOE installations, and, in coordination with the Department of Defense, non-military locations on installations that store or process naval reactor fuel (collectively known as "DOE Locations"). This collection of information affects only those persons performing activities at DOE Locations that would be declarable to the IAEA under the U.S. AP. The NRC is the Lead Agency for locations that are subject to the regulatory authority of the NRC, pursuant to the NRC's regulatory jurisdiction under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), with the exception of those NRC-licensed or NRC-certified facilities at DOE Locations. The Department of Commerce (DOC) is the Lead Agency for all other locations in the United States, except DOE Locations and those locations for which the NRC is the Lead Agency. All persons, including DOE contractors performing declarable activities at locations other than those for which DOE is the Lead Agency, would submit their declarations for these activities at non-DOE locations to either the NRC or DOC, as appropriate.

The Department of Energy proposes to collect information that is required for submission under the U.S. AP. Collecting this information from those persons who are actually performing declarable activities at DOE Locations provides the most effective and efficient way for DOE to identify such declarable activities and the locations associated with such activities, and to compile accurate and timely information on such activities.

All reporting requirements that are applicable to respondents making their declarations through DOE can be found in Article 2.a of the U.S. AP. These activities are considered to be funded, specifically authorized or controlled by, or carried out on behalf of, the United States, by virtue of the fact that the Department of Energy, as an agency of the U.S. Government controls all

activities, regardless of performer, that occur at its installations.

(5) *Type of Respondents*: Respondents will primarily include DOE Management and Operations (M&O) contractors operating DOE installations and facilities. (6) *Estimated Number of Respondents*: DOE estimates that the number of respondents submitting their declaration under the U.S. AP through DOE will range from 10–15. The number will fluctuate on an annual basis. However, any person performing a declarable activity at a location for which DOE is the Lead Agency must report that activity through DOE, and the identity of such persons might change from year to year as declarable activities are initiated or terminated. (7) *Estimated Number of Burden Hours*: The burden in person-hours of responding to the proposed collection of information will depend on the number of declarable activities at the respondent's location. This estimate includes the effort required to identify these activities, collect information on them, complete the declarations, and submit them to DOE. This effort per collection might range from as low as 40 hours, for a person with one or two declarable activities, to as many as 400 hours, for a person with 30–40 declarable activities. This effort includes annual effort expended in maintaining and training with the software provided by DOE to collect and report the information as well as making the declaration.

Statutory Authority: 22 U.S.C. 1801, *et seq.*

Issued in Washington, DC, on September 30, 2008.

Kurt Siemon,

Acting Assistant Deputy Administrator for nonproliferation And International Security.
[FR Doc. E8–23541 Filed 10–3–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council; Notice of Open Meeting

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Friday, November 14, 2008
9 a.m.–12 Noon.

ADDRESSES: Westin Grand Hotel, 2350 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues:

Tentative Agenda:

○ Call to Order and Opening Remarks by Mr. Michael G. Mueller, Chair

○ Remarks by Mr. Samuel W.

Bodman, Secretary of Energy (Invited)

○ Council Business

Status report on issues papers and information manual—Jerry Hollinden & Jackie Bird, Co-Chairs/Project Work Group

○ Presentation of Guest Speaker re: Overview of the World Energy Markets—Frank Clemente, Penn State University

○ Presentation of Guest Speaker re: Status of Coal-to-Liquids and Coal-to-Natural Gas Technologies—James Childress, Gasification Research Council

○ Presentation of Guest Speaker re: Election 2008: The Impact on Coal—Hal Quinn, National Mining Association

○ Other Business

○ Adjourn

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane at the address and telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 1, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–23542 Filed 10–3–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–478–000]

Magnum Gas Storage, LLC; Notice of Application

September 30, 2008.

Take notice that on September 24, 2008, Magnum Gas Storage, LLC (MGS), 2150 South, 1300 East, Suite 500, Salt Lake City, Utah 84106, filed with the Commission a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to section 7(c)–(1)–(B) of the Natural Gas Act (NGA), and Rule 207–(a)–(5) of the Commission's Rules of Practice and Procedures. MGS requests an exemption for the temporary and limited purpose of drilling up to two test wells and to perform other activities to assess the optimal manner in which to develop an underground natural gas storage facility in the Magnum Salt Structure, located in the Millard County, Utah. All as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for MGS, James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue, NW., Suite 1100, Washington, DC 20006, or via telephone at (202) 346–7999, facsimile number (202) 346–8102, or e-mail jbowe@dl.com.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the

completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: October 14, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23501 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13127-000]

Mississippi 24 Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

September 30, 2008.

Mississippi 24 Hydro, LLC filed an application on March 3, 2008, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 24 Hydroelectric Project, which would be located near the town of Clarksville on the Mississippi River at the existing U.S. Army Corps of Engineers' Lock and Dam No. 24 and Reservoir in Calhoun County, Illinois and Pike County, Missouri. The proposed project would utilize federal lands.

The proposed Mississippi River Lock and Dam No. 24 Hydroelectric Project would utilize the U.S. Army Corps of Engineers' Lock and Dam No. 24 and would consist of the following new facilities: (1) An intake structure, (2) a powerhouse containing 3 generating units with a total installed capacity of 22.3 MW, (3) a 5-mile-long, 46 kV underground transmission line, connecting to an existing power line, and (4) appurtenant facilities. The project would have an annual generation of 241 gigawatts-hours, which would be sold to a local utility.

Applicant Contact: Mr. Brent Smith, Mississippi 24 Hydro, LLC, 975 South State Highway, Logan, UT 84321; phone: (435) 752-2580.

FERC Contact: Tom Papsidero, (202) 502-6002.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at

<http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13127) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23503 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 1, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08-634-000.

Applicants: Young Gas Storage Company, Ltd.

Description: Operational Purchases and Sales Annual Report of Young Gas Storage Company, Ltd.

Filed Date: 09/30/2008.

Accession Number: 20080930-5013.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-635-000

Applicants: Carolina Gas Transmission Corporation

Description: Carolina Gas

Transmission Corp submits a report containing proposed Fuel Retainage Percentages for the period beginning 11/1/08 and Fourth Revised Sheet 10 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 09/30/2008.

Accession Number: 20081001-0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-636-000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Fifteenth Revised Sheet 4 to its FERC Gas Tariff, Third Revised Volume 1-A, effective 11/1/08.

Filed Date: 09/30/2008.

Accession Number: 20081001-0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-637-000.

Applicants: Hardy Storage Company, LLC.

Description: Request for Extension of Time to File Retainage Adjustment mechanism of Hardy Storage Company, LLC.

Filed Date: 09/30/2008

Accession Number: 20080930-5087.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP08-639-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Twenty-First Revised Sheet 4A to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 09/30/2008.

Accession Number: 20081001-0108.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-640-000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits 120th Revised Sheet 9 to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 09/30/2008.

Accession Number: 20081001-0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-643-000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corporation submits Twenty-Ninth Revised Sheet 29 to FERC Gas Tariff, Third Revised Volume 1, to be effective 11/1/08.

Filed Date: 09/30/2008.

Accession Number: 20081001-0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP08-644-000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Company submits Ninth Revised Sheet 358I to FERC Gas Tariff, Second Revised Volume 1, to be effective 9/30/08.

Filed Date: 09/30/2008.

Accession Number: 20081001-0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP96-272-081.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 52 Revised Sheet 66A to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 10/1/08.

Filed Date: 09/30/2008

Accession Number: 20081001-0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP96-312-184.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co. submits a negotiated rate gas transportation agreement with Southern Connecticut Gas Co.

Filed Date: 09/30/2008.

Accession Number: 20081001-0110.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: RP96-320-096.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits several capacity release agreements.

Filed Date: 09/30/2008.

Accession Number: 20081001-0109.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23538 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 18, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08-92-000.

Applicants: Ashtabula Wind, LLC.

Description: Ashtabula Wind, LLC Amendment to Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 09/15/2008.

Accession Number: 20080915-5141.

Comment Date: 5 p.m. Eastern Time on Monday, October 06, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01-48-013.

Applicants: Powerex Corp.

Description: Notice of Change in Status.

Filed Date: 09/15/2008.

Accession Number: 20080915-5100.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER01-1403-007; ER06-1443-004; ER04-366-006; ER01-2968-009; ER01-845-007; ER05-1122-005; ER08-107-002.

Applicants: FirstEnergy Operating Companies, Pennsylvania Power Company, Jersey Central Power & Light Co., FirstEnergy Solutions Corp., FirstEnergy Generation Corporation, FirstEnergy Nuclear Generation

Corporati, FirstEnergy Generation Mansfield Unit 1.

Description: FirstEnergy Corp submits a recent telephone request of FERC Staff re Substitute First Revised Sheet 16 et a to FERC Electric Tariff, Second Revised Volume 2.

Filed Date: 09/11/2008.

Accession Number: 20080916-0089.

Comment Date: 5 p.m. Eastern Time on Thursday, October 2, 2008.

Docket Numbers: ER08-951-002.

Applicants: PSEG Energy Resources & Trade LLC.

Description: PSEG Energy Resources & Trade, LLC submits a response to the 8/14/08 deficiency letter issued by the Commission Staff concerning its 5/13/08 filing of a new a rate schedule, as amended on 7/7/08, setting forth the cost-based revenue etc.

Filed Date: 09/15/2008.

Accession Number: 20080916-0093.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1152-001.

Applicants: Potomac Electric Power Company.

Description: Potomac Electric Power Co submits an executed Interconnection Agreement with Panda-Brandywine, LP in compliance with FERC's 6/23/08 Order.

Filed Date: 09/15/2008.

Accession Number: 20080916-0081.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1288-001.

Applicants: Wapsipinicon Wind Project LLC.

Description: Wapsipinicon Wind Project, LLC responds to FERC Staff Request and request for shortened comment period.

Filed Date: 09/15/2008.

Accession Number: 20080917-0125.

Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER08-1425-002.

Applicants: ML Partnership, LLC.

Description: ML Partnership, LLC submits an updated Petition and FERC Electric tariff, Original Volume 1.

Filed Date: 09/15/2008.

Accession Number: 20080916-0082.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1521-000.

Applicants: American Electric Power System Corp.

Description: AEP East Operating Companies et al submits its calculation of the revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service.

Filed Date: 09/11/2008.

Accession Number: 20080916-0085.

Comment Date: 5 p.m. Eastern Time on Thursday, October 2, 2008.

Docket Numbers: ER08-1524-000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits for filing Third Revised Rate Schedule 317, the Second Amended and Restated Partial Requirements Power Purchase Agreement with Rutherford Electric Membership Corp.

Filed Date: 09/11/2008.

Accession Number: 20080916-0202.

Comment Date: 5 p.m. Eastern Time on Thursday, October 2, 2008.

Docket Numbers: ER08-1533-000.

Applicants: Tor Power, LLC.

Description: Tor Power, LLC submits notice cancelling its market-based rate tariff, FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/15/2008.

Accession Number: 20080916-0086.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1534-000.

Applicants: Midwest Independent System Transmission.

Description: Midwest Independent Transmission System Operator, Inc submits a Transmission to Transmission Interconnection Agreement among Great River Energy, a Minnesota cooperative corporation, Northern States Power Company etc.

Filed Date: 09/15/2008.

Accession Number: 20080916-0091.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1536-000.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Company-MN submits the Consent and Assignment Agreement dated 7/9/08 with Moraine Wind, LLC et al pursuant to Order 614 designated as Supplement 1 to Original Agreement 206-NSP.

Filed Date: 09/15/2008.

Accession Number: 20080916-0079.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1538-000.

Applicants: Northern States Power Company.

Description: Northern States Power Company-MN and Northern States Power Company-WI submits a Notice of Cancellation for six Legacy Transmission Service Agreements.

Filed Date: 09/15/2008.

Accession Number: 20080916-0080.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1540-000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits a new Attachment H-16E to their Open Access

Transmission Tariff setting forth a Deferral Recovery Charge to recover regional transmission organization costs etc.

Filed Date: 09/12/2008.

Accession Number: 20080916-0100.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Docket Numbers: ER08-1541-000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits an amended Interconnection Agreement with Tenaska Alabama II Partners LP etc.

Filed Date: 09/12/2008.

Accession Number: 20080916-0101.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Docket Numbers: ER08-1543-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to their Open Access Transmission Tariff intended to amend the rate changes for Westar Energy, Inc et al.

Filed Date: 09/15/2008.

Accession Number: 20080917-0131.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1544-000.

Applicants: E. ON U.S. LLC.

Description: E. ON U.S., LLC on behalf of Louisville Gas and Electric Co et al. submits proposed revisions to its OATT.

Filed Date: 09/15/2008.

Accession Number: 20080917-0128.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: ER08-1546-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Second Amended Interchange Agreement with Associated Electric Cooperative, Inc et al.

Filed Date: 09/16/2008.

Accession Number: 20080917-0243.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: ER08-1547-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Network Integration Transmission Service Agreement dated 8/19/08 with Basin Electric Power Cooperative designated as Service Agreement 505, Seventh Revised Volume 11 OATT et al.

Filed Date: 09/17/2008.

Accession Number: 20080917-0241.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-115-002.
Applicants: Alcoa Power Generating Inc.

Description: Order No. 890 OATT Attachment C.

Filed Date: 09/15/2008.

Accession Number: 20080915-5164.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: OA08-156-000.

Applicants: Aquila, Inc.

Description: Order No. 890-B Compliance Filing.

Filed Date: 09/17/2008.

Accession Number: 20080917-5002.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail

notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E8-23497 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 30, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP99-176-168.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits Amendment 3 to the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit with Nicor Gas Co.

Filed Date: 09/26/2008.

Accession Number: 20080926-0173.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: RP99-301-214.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits 1 Rate Schedule FTS-1 negotiated rate service agreement between with Merrill Lynch Commodities, Inc, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0079.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-215.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits four Rate Schedule FTS-1 negotiated rate service agreements with Chevron USA Inc, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0078.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-216.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits an amendment to Rate Schedule NNS negotiated rate agreement with Wisconsin Electric Power Co, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0077.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-217.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits an amendment to Rate Schedule FTS-1 negotiated rate agreement with Wisconsin Public Service Corporation (Contract No. 12000), to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0076.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-218.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits an amendment to Rate Schedule ETS negotiated rate agreement with Madison Gas & Electric Co (Contract No. 106454), to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0075.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-219.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits 1 Rate Schedule FTS-1 negotiated rate service agreement with Southwest Energy, LP, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0074.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-220.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits Rate Schedule FTS-1 negotiated rate service agreements with Oneok Energy Services Co, LP, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0073.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-221.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits Rate Schedule FTS-1 negotiated rate service agreements with Nexen Marketing USA, Inc, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0072.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-222.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Co submits Rate Schedule FTS-1 negotiated rate service agreements with CIMA Energy, Ltd, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0071.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-223.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FTS-1 negotiated rate service agreements with ConocoPhillips Co, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0070.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP99-301-224.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Co submits Rate Schedule FTS-1 negotiated rate service agreements with Tenaska Marketing Ventures, to be effective 11/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0069.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP00-632-031.
Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Sub Third Revised Sheet 1120 to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 09/25/2008.

Accession Number: 20080926-0067.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: RP02-534-010.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Original Sheet 9A to FERC Gas Tariff, Original Volume 1, effective 10/24/08.

Filed Date: 09/24/2008.

Accession Number: 20080926-0080.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP05-422-029.
Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Co submits its supplemental Refund Report in accordance with the provisions of Section 154.201(e).

Filed Date: 08/28/2008.

Accession Number: 20080903-0049.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Docket Numbers: RP05-422-030.
Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits a statement for informational purposes in response to FERC's order issued on 9/5/08 re the rate case settlement pursuant to Article 11.2.

Filed Date: 09/22/2008.

Accession Number: 20080925-0046.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP08-392-002.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Original Sheet 100 et al to its FERC Gas Tariff, Third Revised Volume 1, and effective 9/15/08.

Filed Date: 09/26/2008.

Accession Number: 20080926-0174.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 8, 2008.

Docket Numbers: RP08-630-000.
Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co's petition for a limited waiver of tariff provisions.

Filed Date: 09/24/2008.

Accession Number: 20080925-0050.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP08-631-000.
Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp submits Fifty-Fifth Revised Sheet 27 et al to FERC Gas Tariff, Third Revised Volume 1, to be effective 10/1/08.

Filed Date: 09/24/2008.

Accession Number: 20080925-0049.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: RP08-632-000.
Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co, LP submits Third Revised Sheet 1414 et al to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 11/1/08.

Filed Date: 09/25/2008.

Accession Number: 20080926-0066.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: RP08-633-000.
Applicants: National Fuel Gas Supply Corporation.

Description: Petition of National Fuel Gas Supply Corp for waiver of tariff provisions under RP08-633.

Filed Date: 09/25/2008.

Accession Number: 20080926-0065.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Docket Numbers: CP06-416-005.
Applicants: Northwest Pipeline GP.

Description: Northwest Pipeline GP submits First Revised Sheet 7, et al to FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 09/25/2008.

Accession Number: 20080929-0067.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 7, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23507 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****Combined Notice of Filings #1**

September 29, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–91–001.

Applicants: Horizon Asset Management, Inc.

Description: Horizon Asset Management, Inc submits an Amendment to Petition for Disclaimer of Jurisdiction, or in the Alternative, for Blanket Authorization to Acquire Securities Under Section 203 of the Federal Power Act.

Filed Date: 09/25/2008.

Accession Number: 20080929–0010.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–92–000.

Applicants: Ashtabula Wind, LLC.

Description: Ashtabula Wind, LLC Amendment to Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 09/15/2008.

Accession Number: 20080915–5141.

Comment Date: 5 p.m. Eastern Time on Monday, October 6, 2008.

Docket Numbers: EG08–95–000.

Applicants: Flat Ridge Wind Energy, LLC.

Description: Amended Notice of Self Certification of Flat Ridge Wind Energy, LLC.

Filed Date: 09/23/2008.

Accession Number: 20080923–5045.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–478–008.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff in order to amend its 6/16/08 compliance filing.

Filed Date: 09/26/2008.

Accession Number: 20080929–0101.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER07–1421–004; ER07–1422–004; ER08–549–003; ER08–550–003; ER08–573–002; ER08–574–002.

Applicants: PJM Interconnection, L.L.C.; Virginia Electric and Power Company.

Description: Supplement to Settlement Agreement and Offer of Settlement submitted by Virginia Electric and Power Company d/b/a Dominion Virginia Power.

Filed Date: 09/25/2008.

Accession Number: 20080925–5050.

Comment Date: 5 p.m. Eastern Time on Thursday, October 9, 2008.

Docket Numbers: ER08–867–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits its May 2007 Joint Operating Agreement with the OJM and Schedule C to the JOA.

Filed Date: 09/25/2008.

Accession Number: 20080929–0009.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1543–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits clean and redlined version of the corrected Attachment E.

Filed Date: 09/25/2008.

Accession Number: 20080929–0008.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1553–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits the instant errata filing to correct a typographical error in its 9/16/08 filing for an executed interconnection service agreement among PJM, RPL Holdings, Inc and Public Service Electric and Gas Company.

Filed Date: 09/25/2008.

Accession Number: 20080929–0007.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1575–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection L.L.C. submits revisions to Section 6.8 of Attachment DD of their Open-Access Transmission Tariff.

Filed Date: 09/26/2008.

Accession Number: 20080929–0048.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1576–000.

Applicants: Southern Company Services, Inc.

Description: Gulf Power Company submits a Notice of Cancellation of the Transmission Service Agreement with Bay County, FL.

Filed Date: 09/26/2008.

Accession Number: 20080929–0049.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1577–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Cooperative Inc submits new Amended and Restated Wholesale Power Contacts.

Filed Date: 09/26/2008.

Accession Number: 20080929–0103.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1578–000.

Applicants: Mirant California, LLC.

Description: Mirant California, LLC submits notice of cancellation of FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/26/2008.

Accession Number: 20080929–0104.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1579–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits Rate Schedule 326 the First Amended and Restated Power Purchase Agreement Between Duke Energy Carolinas, LLC and North Carolina Electric Membership Corporation dated as of 8/11/08.

Filed Date: 09/26/2008.

Accession Number: 20080929–0106.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1580–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company submits the Redbud Generating Facility Ownership and Operating Agreement by and Among Grand River Dam Authority.

Filed Date: 09/26/2008.

Accession Number: 20080929–0105.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Docket Numbers: ER08–1581–000.

Applicants: Mint Farm Energy Center LLC.

Description: Mint Farm Energy Center LLC submits a notice of cancellation of their FERC Electric Tariff, Original Volume 1.

Filed Date: 09/26/2008.

Accession Number: 20080929–0102.

Comment Date: 5 p.m. Eastern Time on Friday, October 17, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a

compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23508 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-467-000]

Texas Gas Transmission, LLC; Notice of Intent To Prepare An Environmental Assessment for the Proposed Fayetteville Shale Compression Project and Request for Comments on Environmental Issues

September 30, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will address the environmental impacts of the Fayetteville Shale Compression Project (project) involving construction and operation of facilities by Texas Gas Transmission, LLC (Texas Gas) in White County, Arkansas, and Humphreys and Washington Counties, Mississippi.¹ The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. This notice explains the scoping process we² will use to gather environmental input from the public and interested agencies on the projects. Your input will help the Commission determine the issues that need to be evaluated in the EA. Please note that the scoping period will close on November 14, 2008.

Details on how to submit written comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement for its project. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify

¹ Texas Gas' application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

² "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Projects

Texas Gas proposes to construct, own, operate, and maintain certain natural gas transportation facilities within the states of Arkansas and Mississippi. The general locations of the proposed compression facilities are shown in the figure included as Appendix 1.³ The purpose of the project is to facilitate the transportation and delivery of natural gas from the Fayetteville Shale natural gas production fields in Arkansas via the Texas Gas system to markets in the midwest, northeast, and southeast United States.

Texas Gas proposes to begin constructing the project in June 2009, and to place the project in service in December 2009. The proposed facilities are listed below.

- The Bald Knob Compressor Station in White County, Arkansas, near milepost (MP) 65.8 of the Fayetteville Lateral would include:
 - 26,660 horsepower (hp) of compression consisting of two Solar Mars 100 turbines (T1 and T2) equipped with SoLoNO_x (low nitrogen oxide [NO_x] burners);
 - A control building to house the compressors, an emergency backup generator, heaters, and other equipment;
 - An auxiliary building for the heating, ventilating, and air conditioning (HVAC) facilities; and
 - An 845-foot-long suction pipeline and a 746-foot-long discharge pipeline, both 36 inches in diameter between the station and the Fayetteville Lateral.
- The Isola Compressor Station in Humphreys County, Mississippi, near MP 27.0 of the Greenville Lateral would include:

³ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Texas Gas.

- 13,330 hp of compression consisting of one Solar Mars 100 turbine (T1) equipped with SoLoNO_x (low NO_x burners);
- A control building to house the compressor, an emergency backup generator, heaters, and other equipment;
- An auxiliary building for the HVAC facilities; and
- A 675-foot-long suction pipeline and a 535-foot-long discharge pipeline, both 36 inches in diameter between the station and the Fayetteville Lateral.
 - The modifications to the existing Greenville Compressor Station in Washington County, Mississippi, would include facilities to:
 - Connect two existing reciprocating compressors to the existing yard and station piping discharging to the Greenville Lateral;
 - Extend this yard and station piping to attach the T-2 turbine compressor to allow it to discharge into the Greenville Lateral; and
 - Upgrade and expand an existing check meter.

Land Requirement

The total land requirement for the project would be about 91.8 acres. Construction of the proposed new compressor stations would be within 60-acre and 81-acre parcels of land Texas Gas would acquire for construction and operation of the Bald Knob and Isola Compressor Stations, respectively. Construction of the Bald Knob Compressor Station would require about 41.8 acres, and about 8.9 acres of this total would be permanently required for operation. Permanent access to the site would be directly from North Taylor Road; so no new access road would be required.

Construction of the proposed Isola Compressor Station would require about 49.7 acres for construction, and about 13.3 acres of this total would be required for operation. Included in the permanent acreage requirement would be about 1.1 acres for a 1,996-foot-long, 30-foot-wide permanent access road extending from Beasley Bayou Road to the fenced station yard.

Construction of the proposed facilities at the existing Greenville Compressor Station would require about 0.3 acre to construct within the existing 45.8-acre, fenced station.

The disturbed areas would be restored following construction. Areas within the proposed compressor stations that would be fenced and permanently impacted by operation of the proposed facilities would be gravel-or concrete-covered. Areas outside the fenced areas would be seeded and restored.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EA to consider the environmental impact that could result if the project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Air quality and noise;
- Hazardous waste; and
- Public safety.

In the EA, we will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on affected resources.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives, and measures to avoid or lessen the environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before November 14, 2008.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project

docket number with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502-8258 or eFiling@ferc.gov.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing."

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenor has the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at <http://www.ferc.gov>. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the

Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the project docket number excluding the last three digits (*i.e.*, PF06-1) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Texas Gas has established an Internet Web site for the project at www.txgt.com, then click on expansion projects. The Web site includes a description of the project, a map of the proposed pipeline route, and contact information. You may also use Texas Gas' toll free telephone number, 1-866-462-6679 to ask questions about the project.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E8-23504 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PF08-22-000; PF08-23-000]

TransCanada PipeLine USA, Ltd.; Bison Pipeline, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Pathfinder Pipeline Project and Bison Pipeline Project; Request for Comments on Environmental Issues and Notice of Public Meetings

September 30, 2008.

The Federal Energy Regulatory Commission (FERC or Commission) is in the process of preparing an environmental impact statement (EIS) on the environmental impacts of the Pathfinder Pipeline Project involving the construction and operation of a new underground natural gas pipeline proposed by TransCanada PipeLine USA, Ltd. (TransCanada). The Pathfinder project is under review in Docket No. PF08-22-000.

A related pipeline project, the proposed Bison Pipeline Project (Bison) is also currently under review in Docket No. PF08-23-000. The entire route of Bison is identical to that of the corresponding portion of Pathfinder (Segment 2) from Dead Horse to Compressor Station No. 6, as described further in Summary of the Proposed Project section of this notice.

On September 3, 2008, TransCanada announced that one of its subsidiaries acquired Bison Pipeline, LLC from Northern Border. With this acquisition, TransCanada will provide shippers on Bison the opportunity to transport their production on Pathfinder. TransCanada proposes to build either Pathfinder or Bison. Once TransCanada is in a position to confirm which of the two Projects it will pursue, TransCanada will file a request with the FERC to discontinue review of the other project. While we¹ are requesting comments on both Pathfinder and Bison, we expect that a single project will be proposed and addressed in our EIS.

This Notice of Intent (NOI) explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine which issues will be evaluated in the EIS. Please note that the scoping period for this Project will close on November 3, 2008.

Comments on the Project may be submitted in written form or verbally. In

¹ "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

lieu of, or in addition, to sending written comments, we also invite you to attend the public scoping meetings that have been scheduled in the Project area during the week of October 13, 2008.

Details on how to submit comments and additional details of the public scoping meetings are provided in the Public Participation section of this notice.

The FERC will be the lead federal agency in the preparation of an EIS that will satisfy the requirements of the National Environmental Policy Act (NEPA) and will be used by the FERC to consider the environmental impacts that could result if the Commission issues a Certificate of Public Convenience and Necessity for the Project under Section 7 of the Natural Gas Act. As a part of that review we will be preparing an EIS for the proposed Project.

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS because the Project would cross federal lands and resources administered by the White River, Little Snake, Lander, Rawlins, Casper, Buffalo, Miles City and North Dakota Field Offices, for which the BLM has jurisdiction and/or special expertise with respect to environmental issues/impacts. The EIS will be used by the BLM to meet its NEPA responsibilities in considering TransCanada's application for a Right-of-Way Grant and Temporary Use Permit for the portion of the Project on federal land.

Although a formal application has not been filed, the FERC has already initiated its NEPA review under its pre-filing process. A pre-filing docket number has been assigned to the Pathfinder Pipeline Project (PF08-22-000) and the Bison Pipeline Project (PF08-23-000). The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

This NOI is being sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentators and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a TransCanada representative about the acquisition of an easement to construct, operate, and maintain the proposed

facilities. TransCanada would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, and the Project is ultimately approved by the FERC, TransCanada could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (<http://www.ferc.gov/for-citizens/citizen-guides.asp>). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in FERC's proceedings.

Summary of the Proposed Project

TransCanada has announced its proposal to construct and operate a new natural gas pipeline and associated structures with a maximum capacity of 1.6 billion cubic feet per day. As shown in Appendix 1,² the Pathfinder Project would be located in portions of Colorado, Wyoming, Montana, and North Dakota and would consist of 673 miles of 36-inch-diameter pipeline running from Meeker, Rio Blanco County, Colorado to near Glen Ullin, Morton County, North Dakota. The currently proposed pipeline route would travel across Rio Blanco and Moffat Counties in Colorado; Carbon, Sweetwater, Fremont, Natrona, Johnson, and Campbell Counties in Wyoming; Powder River, Carter, and Fallon Counties in Montana; and Bowman, Slope, Hettinger, Stark, Grant, and Morton Counties, North Dakota. The pipeline would connect to the existing Northern Border mainline pipeline system in southwest North Dakota and would deliver natural gas to primarily midwestern markets. The proposed Pathfinder Project includes an 11-mile-long supply lateral,³ the Wamsutter Segment, located near Wamsutter, Sweetwater County, Wyoming to connect the Pathfinder Pipeline Project mainline to natural gas

² The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the "eLibrary" link, from the Commission's Public Reference Room, or by calling (202) 502-8371. For instructions on connecting to eLibrary, refer to the end of this notice.

³ A lateral pipeline typically takes gas from the main system to deliver it to a customer or receives gas from a storage or supply source.

supply in the Green River Basin. Certain associated aboveground facilities are also proposed. Mainline valves spaced at intervals along the pipeline as defined by U.S. Department of Transportation regulations per the Code of Federal Regulations (CFR) 49 Part 192, eight compressor stations, four meter stations, and seven pig launcher and receiver facilities are currently proposed.

More specifically, TransCanada proposes the following primary components for the Pathfinder Project:

- 673 miles of 36-inch diameter underground natural gas pipeline consisting of four segments:

- Meeker Segment: 130 miles of pipeline from an existing gathering hub near Meeker, Colorado to Wamsutter, Wyoming;

- Segment 1: 236 miles of pipeline from Wamsutter, Wyoming to Dead Horse in Campbell County, Wyoming; and

- Segment 2: 297 miles of pipeline commencing in Dead Horse and terminating at the Northern Border Pipeline Company's existing Compressor Station No. 6 in Morton County, North Dakota; and

- Wamsutter Segment: 11 miles of pipeline extending from the existing Echo Springs gas plant to the intersection of the Pathfinder Meeker Segment and Segment 1 in Wamsutter, Wyoming;

- A new 10,000 horsepower compressor station at milepost (MP) 0.0 of the Wamsutter Segment near Echo Springs, Wyoming;

- A new 30,000 horsepower compressor station at MP 153 in Sweetwater County, Wyoming;

- A new 30,000 horsepower compressor station at MP 221 in Fremont County, Wyoming;

- A new 30,000 horsepower compressor station at MP 301 in Natrona County, Wyoming;

- A new 30,000 horsepower compressor station at MP 374 in Campbell County, Wyoming;

- A new 30,000 horsepower compressor station at MP 453 in Powder River County, Montana;

- A new 30,000 horsepower compressor station at MP 535 in Fallon County, Montana;

- A new 30,000 horsepower compressor station at MP 619 in Hettinger County, North Dakota;

- One meter station and one pig launcher on the Meeker Segment; one meter station, one pig launcher, and one pig receiver on the Wamsutter Segment; one meter station and three pig launcher/receivers on Segment 1; and two meter stations, two pig launcher/

receivers, and one pig receiver on Segment 2;

- Approximately 36 mainline valves generally located at 20-mile intervals along the pipeline;

- Temporary pipe storage and contractor yards at various locations along the pipeline for office trailers, parking, and pipe and equipment storage during construction; and

- Temporary construction roadways and short permanent roads from existing roads to meter station sites and other aboveground facilities.

Bison would consist of approximately 297 miles of 24-inch-diameter natural gas pipeline and related pipeline system facilities that would move gas northeastward from Dead Horse across the southeastern corner of Montana and into central North Dakota where it interconnects with the Northern Border pipeline system near Compressor Station No. 6 in Morton County. The entire route of Bison is identical to that of the corresponding portion of Pathfinder (Segment 2) from Dead Horse to Compressor Station No. 6.

Location maps depicting the proposed facilities are attached to this NOI as Appendix 1.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not a natural gas pipeline should be approved. FERC will use the EIS to consider the environmental impacts that could result if it issues a Project authorization to TransCanada under Section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of scoping is to focus the analysis in the EIS on the important environmental issues. With this NOI, we are requesting public comments on the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, and maintenance of the proposed Project under these general headings:

- Geology and soils;
- Water resources;
- Aquatic resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Cultural resources;
- Socioeconomics;

- Air quality and noise;
- Reliability and safety;
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors; other interested parties; local libraries and newspapers; and FERC's official service list for this proceeding. There will be at minimum a 45-day comment period allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, if necessary, before issuing a final EIS. We will then consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this NOI.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. As previously discussed, the BLM has agreed to become a cooperating agency and would use the EIS to fulfill its NEPA responsibilities in considering the potential issuance of a Right-of-Way Grant and Temporary Use Permit for the portion of the Project on federal land. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

The EIS will examine the proposed action and alternatives that require administrative or other actions by other federal agencies.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on our previous experience with similar projects in the region. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Pathfinder Project.

- Potential for disturbance to residents along pipeline construction route, including noise and aesthetics;
- Potential impacts to the viewshed from construction activities and placement of aboveground facilities;
- Potential for geological hazards, including seismic activity, to have impacts on the pipeline;
- Potential impacts of the pipeline on waterbodies and wetlands, including issues of erosion control;
- Potential impacts of the pipeline on vegetation, including the clearing and revegetation of existing plant communities and, in particular, the clearing of riparian areas;
- Potential impacts of the pipeline on threatened and endangered species and wildlife habitat;
- Potential impacts of the pipeline on cultural resources, including paleontological resources and historic trails; and
- Potential impacts of the pipeline on recreation and scenic resources.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Pathfinder Project or Bison Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before November 3, 2008.

Comments on the proposed Project can be submitted to the FERC in written form or verbally at the public scoping meetings. For your convenience, there

are three methods which you can use to submit your written comments to the Commission. In all instances please reference the Project docket number (PF08-22-000 or PF08-23-000) with your submission. The three methods are:

- (1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;
- (2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or
- (3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ-11.3.

The public scoping meetings (dates, times, and locations listed below) are designed to provide another opportunity to offer comments on the proposed Project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS.

A transcript of the meetings will be generated so that your comments can be accurately recorded. All meetings are scheduled to run from 6 to 8 p.m., and are scheduled as follows:

Date	Location
Monday, October 13, 6 to 8 pm	Best Western Tower West Lodge, 109 N. U.S. Highway 14-16, Gillette, Wyoming 82716.
Tuesday, October 14, 6 to 8 pm	Roosevelt High School, 140 East K Street, Casper, Wyoming 82601.
Wednesday, October 15, 6 to 8 pm	Broadus High School, 500 North Trautman, Broadus, MT 59317.
Thursday, October 16, 6 to 8 pm	Jeffrey Memorial Center, 315 East Pine Street, Rawlins, Wyoming 82301.
	Bowman City Hall, 101 1st Street NE, Bowman, North Dakota 58623.
	Holiday Inn Suites, 300 South Colorado Highway 13, Craig, Colorado 81625.
	Parish Hall—Sacred Heart Church, 204 Oak Avenue East, Glen Ullin, North Dakota 58631.

The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202-502-8258 or efiling@ferc.gov.

Once TransCanada formally files its application with the Commission, you may want to become an "intervenor," which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

Everyone who responds to this notice or provides comments throughout the EIS process will be retained on our mailing list for this Project. If you do not want to send comments at this time but want to stay informed and receive copies of the draft and final EIS, you must return the Mailing List Retention Form (Appendix 2). If you do not send comments or return the Mailing List Retention Form asking to remain on the mailing list, you will be taken off the mailing list.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs at 1-866-208-FERC (3372), or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary link." Click on the eLibrary link, select "General Search" and enter the Project docket number, excluding the last three digits (i.e., PF08-22) in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or by e-mail at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with

notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information. Finally, TransCanada has established a Web site for the Project at <http://www.transcanada.com/company/pathfinder.html>. The Web site includes a Project overview, timeline, safety and environmental information, and public outreach. You can also request additional information by contacting TransCanada directly at:

E-mail: pathfinder@transcanada.com.

Mailing address: Pathfinder Pipeline Project, PO Box 6160, Broomfield, CO 80021.

Toll-free telephone: (866) 509-2270.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23500 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-5870-000]

Swisher, Keith L.; Notice of Filing

September 30, 2008.

Take notice that on September 19, 2008, Keith L. Swisher submitted for filing an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2008), Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR Part 45 (2008), and Commission Order No. 664 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 10, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23502 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the Record Communications; Public Notice

September 30, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions

made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable

proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in

ascending order. These filings are 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, please contact FERC, Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

EXEMPT

Docket No.	File date	Presenter or requester
1. CP08-130-000, <i>et al.</i>	9-16-08	Hon. Joe Barton.
2. CP08-429-000	9-17-08	Hon. Jon C. Porter.
3. EC08-124-000	9-17-08	Hon. Christopher S. Murphy.
4. ER08-1113-000	9-22-08	Hon. George Radanovich.
5. ER08-1281-000	9-16-08	Hon. Donald Kasprzak.
6. ER08-1281-000	9-18-08	Hon. Donald L. Carcieri.
7. ER08-1281-000	9-29-08	Hon. Charles Schumer. ¹
8. P-1864-083	9-29-08	Jean Potvin.
9. P-2210-169	9-30-08	Warren D. Price. ² Mollie H. Holmes.
10. P-13178-000	9/17/08	Roger Eddy.
11. PF08-6-000, CP08-431-000	9/23/08	Hon. George V. Voinovich.
12. PF08-6-000, CP08-431-000	9/19/08	Hon. Sherrod Brown.

¹ Memo to file and record for September 17, 2008 meeting.

² One of four letters/e-mails filed in the Smith Mountain Lake proceeding. The other commenters: John Lindsey, Karen and Jerry Over and Reba Dillon.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8-23505 Filed 10-3-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-8725-1]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of National List of Beaches under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: This notice informs the public that EPA has updated the National List of Beaches pursuant to Section 406(g) of the Clean Water Act (CWA) as amended by the Beaches Environmental Assessment and Coastal Health (BEACH) Act. EPA is publishing this list under the title *National List of Beaches*. Section 406(g) requires EPA to publish a list of discrete coastal recreation waters adjacent to beaches or similar points of access that are used by the public and to update the list

periodically as new information becomes available. The list specifies whether the waters are subject to a monitoring and notification program consistent with the performance criteria (National Beach Guidance and Required Performance Criteria for Grants June 2002) EPA published under CWA section 406(a). The list contains information that coastal and Great Lakes States made available to EPA as of January 31, 2008, and it replaces the previous list that EPA published on May 4, 2004. The *National List of Beaches* provides a national baseline of the extent of monitoring of waters adjacent to beaches or similar points of access, which will allow EPA to measure State program performance in implementing the monitoring and notification provisions of the BEACH Act.

ADDRESSES: Address all inquiries concerning this document to Lars Wilcut, Environmental Scientist, Office of Science and Technology, Mail Code 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, (202) 566-0447, wilcut.lars@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

This notice may be of interest to State and local beach managers, the general public, and environmental organizations concerned with public health at beaches.

B. What is the Statutory Authority for the National List of Beaches?

The BEACH Act, signed into law on October 10, 2000, incorporated new provisions in the Clean Water Act to reduce the risk of illness to users of the nation's coastal recreation waters. Section 406(g) of the Clean Water Act, as amended by the BEACH Act, Public Law 106-284, 114 Stat. 970 (2000), states:

“(g) LIST OF WATERS.—

“(1) IN GENERAL.— Beginning not later than 18 months after the date of publication of performance criteria under subsection (a), based on information made available to the Administrator, the Administrator shall identify, and maintain a list of, discrete coastal recreation waters adjacent to beaches or similar points of access that are used by the public that—

“(A) specifies any waters described in this paragraph that are subject to a monitoring and notification program consistent with the performance criteria established under subsection (a); and

“(B) specifies any waters described in this paragraph for which there is no monitoring and notification program (including waters for which fiscal constraints will prevent the State or the Administrator from performing monitoring and notification consistent with the performance criteria established under subsection (a)).

“(2) AVAILABILITY.—The Administrator shall make the list described in paragraph (1) available to the public through—

“(A) publication in the **Federal Register**;

and

“(B) electronic media.

“(3) UPDATES.—The Administrator shall update the list described in paragraph (1) periodically as new information becomes available.”

C. How did EPA obtain this information?

EPA provides federal grant funds to assist coastal and Great Lakes States and Territories in the implementation of their beach monitoring and notification programs. In developing these programs, States and Territories created lists of their coastal recreation waters, including those waters adjacent to beaches and other similar points of access, and identified whether there is a monitoring program for each beach. EPA assisted States through workshops and telephone contact with Regional Beach Coordinators and Headquarters personnel. States then submitted their lists to EPA. EPA compiled the submissions and made the information available to the public on May 4, 2004 (69 FR24597).

Since 2004, coastal and Great Lakes States have updated this information as part of their annual submission of beach monitoring and notification data to EPA. EPA is now publishing the most current update to this information based on the States' beach monitoring and notification data for the 2007 beach season.

D. How will EPA use this National List of Beaches?

The *National List of Beaches* provides EPA a national baseline of the extent of monitoring of waters adjacent to beaches or similar points of access, which will allow EPA to measure improvements in monitoring and notification at all coastal and Great Lake beaches. It will also help EPA determine how to improve implementation of the BEACH Act. The list provides information to the public identifying the beaches in their State and whether they are monitored. In 2007, States and Territories identified a total of 6,247 beaches, the waters of 3,655 of those beaches were monitored and the waters of 2,592 of those beaches were not monitored. EPA continues to work with states to compile additional information

and integrate the *National List of Beaches* with other program information such as frequency of monitoring and beach location and length.

E. How may you look at or get a copy of this list?

The *National List of Beaches* is available on EPA's Web site at: <http://www.epa.gov/waterscience/beaches/>. Copies of the document can also be obtained by writing, calling, or e-mailing: Office of Water Resources Center, U.S. Environmental Protection Agency, Mail Code 4100T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Phone: 202-566-1731 or e-mail: center.water-resource@epa.gov).

F. How do I find more information about my State's or Territory's List of Beaches?

The 35 States subject to the BEACH Act amendments to the Clean Water Act provided the information that EPA used to compile the *National List of Beaches*. State and Territory contacts are identified along with each State's or Territory's list.

G. How will this list change?

EPA intends to update this list periodically based on information received from States. EPA will publish notice in the **Federal Register** of any revisions to the *National List of Beaches*.

Dated: September 30, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8-23555 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2008-0721; FRL-8385-4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2008 through September 12, 2008, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. This status report, also includes a PMN and TME that were inadvertently omitted from a previous report that covered the period from August 4, 2008 through August 15, 2008.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before November 5, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0721, by one of the following methods:

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

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0721. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2008-0721. 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 www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 18, 2008 through September 12, 2008, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. This status report, also includes a PMN and TME that were inadvertently omitted from a previous report that covered the period from August 4, 2008 through August 15, 2008.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/08 TO 09/12/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0624 P-08-0654	07/25/08 08/18/08	10/22/08 11/15/08	Cytec Industrial Inc. CBI	(G) Coating resin (S) Thixotrope for alkyd resins used in paint and coating compositions.	(G) Aliphatic polyurethane (G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with diamines and monoacids.
P-08-0655	08/18/08	11/15/08	CBI	(S) Thixotrope for alkyd resins used in paint and coating compositions.	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with diamines and monoacids.
P-08-0656	08/18/08	11/15/08	CBI	(S) Binder in flexographic or packaging gravure printing inks and varnishes	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with diamines and monoacids.
P-08-0657	08/18/08	11/15/08	CBI	(S) Thixotrope for alkyd resins used in paint and coating compositions.	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with diamines and monoacids.
P-08-0658	08/18/08	11/15/08	CBI	(S) Thixotrope for alkyd resins used in paint and coating compositions.	(G) Fatty acids, C ₁₈ -unsaturated, dimers, polymers with diamines and monoacids.
P-08-0659	08/18/08	11/15/08	Halosource, Inc.	(S) Stormwater purifier for construction sites	(S) Chitosan, 2-hydroxypropanoate (salt)
P-08-0660	08/18/08	11/15/08	Halosource, Inc.	(S) Stormwater purifier for construction sites	(S) Chitosan, acetate (salt)
P-08-0661	08/18/08	11/15/08	CBI	(G) Paper manufacture chemical	(S) Hexanedioic acid, polymers with amine-contg. hydrolyzed N-ethenylformamide-vinyl acetate polymer, epichlorohydrin and triethylenetetramine, sulfates (salts)
P-08-0662	08/18/08	11/15/08	CBI	(G) Precursor for paper manufacture chemical	(S) Hexanedioic acid, polymer with N1,N2-bis(2-aminoethyl)-1,2-ethanediamine
P-08-0663	08/18/08	11/15/08	CBI	(G) Colorant for industrial application	(G) Mixed dichlorobenzidine and substituted alkylamides
P-08-0664 P-08-0665	08/19/08 08/20/08	11/16/08 11/17/08	CBI CBI	(G) Textile finish (G) Concrete additive	(G) Fluorinated acrylic copolymer (G) Acrylic acid ester polymer with vinyl glycol derivative and cyclic alkene anhydride
P-08-0666	08/20/08	11/17/08	CBI	(G) Concrete additive	(G) Acrylic acid ester polymer with vinyl glycol derivative and cyclic alkene anhydride potassium salt
P-08-0667	08/20/08	11/17/08	CBI	(G) Concrete additive	(G) Acrylic acid ester polymer with vinyl glycol derivative and cyclic alkene anhydridesodium potassium salt
P-08-0668 P-08-0669 P-08-0670 P-08-0671	08/20/08 08/21/08 08/21/08 08/21/08	11/17/08 11/18/08 11/18/08 11/18/08	CBI CBI CBI Hi-Tech Color, Inc.	(G) Adhesion promoter (G) Oligomer (G) Oligomer (S) Adhesives for industrial material	(G) Chlorinated polyolefin (G) Urethane acrylate (G) Urethane acrylate (S) Hexanedioic acid, polymer with 1,4-butanediol, 1,3-diisocyanatomethylbenzene and 1,2-propanediol
P-08-0672	08/21/08	11/18/08	CBI	(G) Open non-dispersive use (adhesive resin)	(G) Polyester polyurethane aqueous dispersion
P-08-0673 P-08-0674 P-08-0677	08/22/08 08/22/08 08/25/08	11/19/08 11/19/08 11/22/08	CBI CBI Incorez Corporation	(S) Filler for rubber (G) Component in colorants (S) Amine hardener used in the formulation of epoxy based paints and coatings	(G) Functional metal hydroxide (G) Mixed metal oxides (G) Polyamine epoxy adduct
P-08-0678	08/25/08	11/22/08	Evonik-Degussa Corporation	(S) Extrusion of tubing systems; injection molded semi-finished articles	(G) Polymer of alkanedioic acid and alkanediamine
P-08-0679	08/26/08	11/23/08	CBI	(G) Pour point depressant	(G) Furandione polymer with ethenylbenzene, alkyl ester
P-08-0680	08/26/08	11/23/08	CBI	(S) Herbicide safener and plant growth regulator for agricultural seed treatment; Incorporated into FIFRA registered pesticide	(S) N-[[4-[(cyclopropylamino)carbonyl]phenyl]sulfonyl]-2-methoxybenzamide
P-08-0681 P-08-0682	08/26/08 08/27/08	11/23/08 11/24/08	CBI CBI	(G) Printing additive (S) Metal working lubricant	(G) Polyester resin (G) Ethoxylated maleated triglyceride polymer

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/08 TO 09/12/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0683	08/27/08	11/24/08	CBI	(S) Metal working lubricant	(G) Ethoxylated maleated triglyceride polymer
P-08-0684	08/27/08	11/24/08	CBI	(S) Metal working lubricant	(G) Ethoxylated maleated triglyceride polymer
P-08-0686	08/27/08	11/24/08	Incorez Corporation	(G) Polyurethane resin for coating	(G) Polyurethane prepolymer for coatings
P-08-0687	08/25/08	11/22/08	CBI	(G) Lubricant additive	(G) Amines, polyethylenepoly-, reaction products with isostearic acid and disubstituted methanal.
P-08-0688	08/27/08	11/24/08	CBI	(G) This PMN substance aids in the polymerization of a polymer and is inextricably bound in the cured polymer once polymerized.	(G) Alkylamide, <i>N</i> -(2-ethylhexyl)- (G) Epoxy-amine adduct
P-08-0689	08/27/08	11/24/08	CBI	(G) Processing aid	(G) Substituted aliphatic amine
P-08-0690	08/28/08	11/25/08	CBI	(G) Catalyst	(G) Mixed metal oxide
P-08-0691	08/28/08	11/25/08	CBI	(G) Oil-field additive	(G) Vinyl acetate copolymer
P-08-0692	08/27/08	11/24/08	CBI	(G) Oligomer	(G) Epoxy acrylates
P-08-0693	08/29/08	11/26/08	Cytec Industries Inc.	(S) Resin for paints and coatings	(G) Substituted carbomonocycles, polymer with substituted glycols and alkyldioic acid
P-08-0694	08/29/08	11/26/08	Hexion Specialty Chemicals, Inc.	(G) Curative to be used with epoxy resin; curative to be used with isocyanates in urethane systems; intermediate for synthesis of epoxy resins	(G) <i>N</i> -arylamino-phenol-formaldehyde condensate
P-08-0695	09/02/08	11/30/08	CBI	(G) Component in a epoxy-urethane structural adhesive	(G) Blocked polyurethane prepolymer
P-08-0696	09/03/08	12/01/08	CBI	(G) Additive for concrete construction	(G) Alkenoic acid, metal salt, polymer with (alkyl (C=1-3) alkenyl)hydroxypoly (substituted alkane(C=2-4)diyl), graft
P-08-0697	09/03/08	12/01/08	Henkel Corporation	(S) An accelerator in industrial adhesive formulations	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 2-phenylhydrazides
P-08-0698	09/04/08	12/02/08	Henkel Corporation	(S) A polymerizeable component of adhesive formulations for general industrial bonding applications	(S) Cyclohexanol, 4,4'-(1-methylethylidene)bis-, polymer with 1,3-diisocyanatomethylbenzene and, .alpha.-hydro-omega.-hydroxypoly(oxy-1,4-butanediyl), 2-hydroxy-1-[4-(2-hydroxyethoxy)phenyl]-2-methyl-1-propanone- and propylene glycol monomethacrylate-blocked
P-08-0699	09/04/08	12/02/08	CBI	(G) Intermediate	(G) Alkoxysilane
P-08-0700	09/05/08	12/03/08	CBI	(G) Epoxy adduct component in a structural adhesive	(G) Epoxy prepolymer
P-08-0701	09/08/08	12/06/08	CBI	(G) Pigment for plastics coloration - dispersive use	(G) Benzoic acid, 4-chloro-2-[(substituted)azo]-, strontium salt (1:1)
P-08-0702	09/08/08	12/06/08	Incorez Corporation	(G) Polyurethane resin for coating	(G) Polyurethane prepolymer
P-08-0703	09/08/08	12/06/08	CBI	(G) Ink ingredient	(G) Dihydroxyalkanoic acid, polymer with polyetherdiol and alicyclic diisocyanate
P-08-0704	09/09/08	12/07/08	CBI	(G) Site limited intermediate for personal care ingredient; site limited intermediate for foam control agents	(G) Linear alkyl epoxide
P-08-0705	09/09/08	12/07/08	Orient Corporation of America	(S) Colorant for industrial inkjet printer	(S) Chromium, 1-[2-[5-(1,1-dimethylpropyl)-2-hydroxy-3-nitrophenyl]diazanyl]-2-naphthalenol 1-[2-[2-hydroxy-4(or 5)-nitrophenyl]diazanyl]-2-naphthalenol ammonium sodium complexes
P-08-0706	09/11/08	12/09/08	CBI	(S) Curing agent for epoxy resin in protective coatings	(G) Amides, from C ₁₈ -unsaturated fatty acid dimers, aliphatic polyamines, aliphatic polyamine <i>N</i> -benzyl derivatives, and tall-oil fatty acids

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 08/18/08 TO 09/12/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0707	09/11/08	12/09/08	Strategic Marketing and Management Associates	(G) Aromatic additive	(S) 2 <i>H</i> -2,4A-methanonaphthalen-1(5 <i>H</i>)-one, hexahydro-5,5-dimethyl*
P-08-0708	09/11/08	12/09/08	CBI	(G) Raw material for electronic parts	(G) Phenol, 4,4'-substituted, polymer with 2,2'-[(3,3',5,5'-tetramethyl[1,1'-biphenyl]-4,4'-diyl)]bis(oxyethylene)]bis[oxirane]
P-08-0709	09/12/08	12/10/08	CBI	(G) Additive, open, non-dispersive use	(G) Alkylacrylates, copolymers with alkylmethacrylates and modified methacrylates

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 08/18/08 TO 09/12/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-08-0624 T-08-0020	07/25/08 08/29/08	10/22/08 10/12/08	Cytec Industrial Inc. Cytec Industries Inc.	(G) Coating resin (S) Resin for paints and coatings	(G) Aliphatic polyurethane (G) Substituted carbomonocycles, polymer with substituted glycols and alkyldioic acid

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 50 NOTICES OF COMMENCEMENT FROM: 08/18/08 TO 09/12/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P-05-0605	08/21/08	08/11/08	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, reaction products with lactic acid and monosodium lactate
P-06-0638	09/04/08	08/23/08	(G) Crosslinked cyclic polyester
P-06-0828	09/02/08	08/25/08	(G) Polyacrylate terpolymer salt
P-07-0388	08/20/08	08/03/08	(G) Polydimethylsiloxane hydroxyalkyl terminated, polymers with diisocyanate and aminoalkyl groups aliphatic amine blocked, acetates
P-07-0400	08/26/08	08/07/08	(G) Aliphatic polyurethane resin
P-07-0438	08/22/08	08/09/08	(G) Polyester polyol
P-07-0538	09/02/08	08/21/08	(G) Organic tallate salt
P-08-0040	09/03/08	08/07/08	(G) Polyurethane hybrid
P-08-0068	09/09/08	08/21/08	(S) Oils, <i>Schinus Terebinthifolius</i> Extractives and their physically modified derivatives. <i>Schinus Terebinthifolius</i> .
P-08-0073	09/02/08	08/12/08	(G) Aliphatic polyisocyanate, C ₁₆ -alcohol and polyalkylene glycol-blocked
P-08-0095	08/21/08	08/19/08	(S) Phosphonium, methyltris (2-methylpropyl)-, salt with 4-methylbenzenesulfonic acid (1:1)
P-08-0113	09/09/08	08/21/08	(S) Oils, <i>Vanilla tahitensis</i> Extractives and their physically modified derivatives.
P-08-0184	09/10/08	09/05/08	(G) Polyacrylate/vinylpyridine block copolymer
P-08-0214	09/03/08	08/02/08	(G) Aromatic urethane acrylate polymer
P-08-0223	08/28/08	08/16/08	(G) Fluoroalkyl acrylate copolymer
P-08-0236	08/21/08	08/19/08	(G) Acrylate copolymer
P-08-0253	09/10/08	09/07/08	(G) Unsaturated polyester resin
P-08-0264	09/09/08	08/27/08	(G) Polyester
P-08-0268	08/18/08	07/17/08	(G) Silicone modified urethane adduct
P-08-0272	09/09/08	08/21/08	(S) Oils, Passionflower, <i>Passiflora Edulis</i> Extractives and their physically modified derivatives. <i>Passiflora Edulis</i> .
P-08-0276	08/19/08	08/01/08	(G) Substituted-carbopolycyclic-[[heterocycle]-heterocycle-diy]diimino]bis[substituted-[[sulfocarbocycle]azo]carbocycle]azo]-, sodium salt
P-08-0285	09/09/08	08/21/08	(S) Oils, Peach Extractives and their physically modified derivatives. <i>Prunus Persica</i> .
P-08-0303	09/09/08	08/21/08	(S) Oils, <i>Siparuna Guianensis</i> Extractives and their physically modified derivatives. <i>Siparuna Guianensis</i> .
P-08-0306	08/28/08	08/19/08	(G) Polyether urethane block copolymer

III. 50 NOTICES OF COMMENCEMENT FROM: 08/18/08 TO 09/12/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P-08-0308	09/04/08	08/26/08	(G) Heteromonocycle carboxylic acid, bromo-(3-chloro-2-pyridinyl)-dihydro-, ethyl ester
P-08-0309	09/10/08	09/04/08	(G) Heteromonocycle carboxylic acid, bromo-(3-chloro-2-pyridinyl)-, ethyl ester
P-08-0311	09/04/08	08/21/08	(G) Heteromonocycle carboxylic acid, (3-chloro-2-pyridinyl)-dihydro-[(phenylsulfonyl)oxy]-, ethyl ester
P-08-0312	09/09/08	08/21/08	(S) Excretions, hyraceum, ext. The ethanol soluble components obtained from the extraction of hyraceum (sticky mass of dung and urine) from <i>proscavia carpensis</i>
P-08-0329	08/20/08	08/14/08	(G) Polyurethane derivative
P-08-0336	09/05/08	07/01/08	(G) Polymer with <i>E</i> -caprolactone, hydroxystearic acid, methyldiethanolamine and dicycloheylmethane diisocyanate
P-08-0341	09/09/08	08/21/08	(S) Oils, Guava, <i>Psidium Guajava</i> Extractives and their physically modified derivatives. <i>Psidium Guajava</i>
P-08-0342	09/09/08	08/21/08	(S) Oils, Mango Extractives and their physically modified derivatives. <i>Mangifera Indica</i> .
P-08-0346	08/28/08	08/05/08	(G) Isocyanic acid, alkylene ester, propylene glycol monomethacrylate-blocked
P-08-0356	09/09/08	08/21/08	(S) Oils, Papaya Extractives and their physically modified derivatives. <i>Carica Papaya</i> .
P-08-0357	09/03/08	08/26/08	(G) Polyol
P-08-0366	09/09/08	08/21/08	(S) Oils, <i>Euterpe Precatoria</i> Extractives and their physically modified derivatives. <i>Euterpe Precatoria</i> .
P-08-0375	08/28/08	08/01/08	(G) TS-S692P3 and TS-S694P3: Fatty acid dimers, polymers with diols, cyclical diacid, aromatic polyacid; TS-S693P3 and TS-S695P3: Fatty acid dimers, polymers with diols, cyclical diacid, aromatic polyacid, compounds with amine
P-08-0379	09/09/08	08/21/08	(S) Oils Amomum tsao-ko Extractives and their physically modified derivatives. Amomum tsao-ko, <i>Zingiberaceae</i> .
P-08-0381	09/09/08	08/21/08	(S) Oils, <i>Inula Nervosa</i> Extractives and their physically modified derivatives. <i>Inula Nervosa</i> , <i>Asteraceae</i> .
P-08-0385	08/15/08	07/31/08	(G) Lithium salt of cyclic disulfonic acid
P-08-0389	09/09/08	08/21/08	(S) Honey, desaccharided
P-08-0390	09/03/08	08/22/08	(G) Acrylate polymer with vinyl ether
P-08-0397	09/02/08	08/25/08	(S) 2,4'-dimethylpropiophenone
P-08-0402	09/09/08	08/21/08	(S) Oils, <i>Citrus Hystrix</i> Extractives and their physically modified derivatives. <i>Citrus Hystrix</i> .
P-08-0403	09/09/08	08/21/08	(S) Oils, <i>Kaempferia Galanga</i> Extractives and their physically modified derivatives. <i>Kaempferia Galanga</i> .
P-08-0408	09/03/08	08/22/08	(S) Oils, <i>Dalbergia Cochinchinensis</i> Extractives and their physically modified derivatives. <i>Dalbergia Cochinchinensis</i> .
P-08-0417	09/09/08	08/21/08	(S) Oils Kumquat, <i>Fortunella Margarita</i> Extractives and their physically modified derivatives. <i>Fortunella margarita</i> .
P-08-0437	08/25/08	08/19/08	(G) Amine carboxylate
P-98-0134	08/20/08	07/23/08	(G) Styrene acrylate
P-99-0449	08/26/08	08/05/08	(G) Isocyanate modified polymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 29, 2008.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8-23551 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL DEPOSIT INSURANCE CORPORATION**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and renewal the collections of information described below:

DATES: Comments must be submitted on or before November 5, 2008.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection as well as the OMB control number(s):

- **Web site:** <http://www.FDIC.gov/regulations/laws/federal/notices.html>.

- **Email:** mail to: Comments@FDIC.gov. Include the name of the collection in the subject line of the message.

- **Mail:** Herbert J. Messite (202-898-6834), Counsel, Room F-1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Herbert J. Messite, at the address or telephone number identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064-0022.

Form Number: MSD-4; MSD-5

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 75.

Estimated Time per Response: 1 hour.

Total Annual Burden: 75 hours.

General Description of Collection: An insured state nonmember bank which serves as a municipal securities dealer must file Form MSD-4 or MSD-5, as applicable, to permit an employee to become associated or to terminate the association with the municipal securities dealer. FDIC uses the form to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

2. *Title:* Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064-0027.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 10.

Estimated Time per Response: .42 hours.

Total Annual Burden: 4.2 hours.

General Description of Collection: An insured nonmember bank or a subsidiary of such a bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

3. *Title:* Notification of Performance of Bank Services

OMB Number: 3064-0029.

Form Number: FDIC 6120/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 400.

Estimated Time per Response: 1/2 hour.

Total Annual Burden: 200 hours.

General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form FDIC 6120/06

(Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

4. *Title:* Summary of Deposits.

OMB Number: 3064-0061.

Form Number: 8020/05 (7-95).

Frequency of Response: Annually.

Affected Public: All insured financial institutions.

Estimated Number of Respondents: 6,000.

Average Estimated Time per

Response: 3 hours.

Total Annual Burden: 18,000 hours.

General Description of Collection: The Summary of Deposits annual survey obtains data about the amount of deposits held at each office of all insured banks with branches in the United States. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in banking research.

5. *Title:* External Audits.

OMB Number: 3064-0113.

Frequency of Response: Annually

Affected Public: All insured financial institutions with total assets of \$500 Million or more, and other insured financial institutions with total assets of less than \$500 Million that voluntarily choose to comply.

Estimated Number of Respondents: 5,205

Average Estimated Time per

Response: (a) Financial institutions with assets of \$1 Billion or more: 65.05 hours; (b) financial institutions with assets of \$500 Million, but less than \$1 Billion: 8.10 hours; (c) financial institutions with total assets less than \$500 Million: 25 minutes.

Total Annual Burden: 83,324 hours.

General Description of Collection: FDIC's regulations at 12 CFR 363 establish annual independent audit and reporting requirements for financial institutions with total assets of \$500 Million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (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. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of October, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8-23495 Filed 10-3-08; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Delmo R. Payne and Wilmuth Payne*, both of Hamilton, Alabama, to acquire additional voting shares of Hometown Bancshares, Inc., and thereby indirectly acquire additional voting shares of PeoplesTrust Bank, both of Hamilton, Alabama.

2. *Gerald Terrell, Faye Terrell, Donald L. Terrell, and Danny Terrell*, all of Hamilton, Alabama; *Audrey Garrett and William Garrett*, both of Birmingham, Alabama, to acquire additional voting shares of Hometown Bancshares, Inc., and thereby indirectly acquire additional voting shares of PeoplesTrust Bank, both of Hamilton, Alabama.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Clyde Ray White, Clydine Covington White, and Jarrah Reed White*, all of Monroe, Louisiana; Larry Nolan White and Virginia Owens White, both of Colleyville, Texas; and Patrick Slade White, Huntsville, Alabama, acting in concert to acquire voting shares of Ouachita Bancshares Corporation, and thereby indirectly acquire voting shares of Ouachita Independent Bank, both of Monroe, Louisiana.

Board of Governors of the Federal Reserve System, October 1, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-23521 Filed 10-3-08; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *First Trust Corporation*, New Orleans, Louisiana, to indirectly acquire 100 percent of the voting shares of *Globe Bancorp, Inc.*, and thereby indirectly acquire *Globe Homestead Savings Bank, FSA*, both of Metairie, Louisiana, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8-23519 Filed 10-3-08; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/02/2008			
20081619	JANA Offshore Partners, Ltd	Convergys Corporation	Convergys Corporation.
20081641	GTCR Fund IX/A, L.P	TA IX L.P	Triumph HealthCare Holdings, Inc.
20081644	Teck Cominco Limited	Fording Canadian Coal Trust	1231207 Alberta ULC. 627066 Alberta Ltd. Ardley Coal Limited. Beachpoint Holdings Ltd. Bitmin Resources Inc. Fording Amalco Inc. Fording Coal Limited. Philadelphia Consolidated Holding Corp.
20081647	Tokio Marine Holdings, Inc	Philadelphia Consolidated Holding Corp.	Philadelphia Consolidated Holding Corp.
20081649	USA Credit Union	T & C Federal Credit Union	T & C Federal Credit Union.
20081657	Gores Capital Partners, L.P	Gores LuxCo I, S.a r.l	Gores LuxCo I, S.a r.l.
20081658	CapCom Credit Union	DFCU Financial Federal Credit Union.	DFCU Financial Federal Credit Union.
20081660	Comcast Corporation	Pilot Group LP	Daily Candy, Inc.
20081661	FMG Acquisition Corp	United Insurance Holdings, L.C	United Insurance Holdings L.C.
20081670	Deutsche Telekom AG	AT&T Inc	AT&T Mobility LLC f/k/a. Cingular Wirelless LLC. AT&T Mobility LLC F/k/a. Dobson Cellular Systems, LLC. T-Mobile USA, Inc.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/04/2008			
20081611	ABRY Partners V, L.P	Warburg, Pincus Equity Partners, L.P.	ChartOne, Inc.
20081662	Bristol-Myers Squibb Company	PDL BioPharma, Inc	PDL BioPharma, Inc.
20081667	Janus Capital Group, Inc	Mac-Per-Wolf Company	Perkins, Wolf, McDonnell and Company, LLC.
20081669	Li & Fung Limited	Bruce Makowsky and Kathleen Van Zeeland.	Van Zeeland, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/05/2008			
20081511	ION Geophysical Corporation	Donald G. Chamberlain	ARAM Systems, Ltd. Canadian Seismic Rentals Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/08/2008			
20081500	Sisters of Providence—Mother Joseph Province.	HOP, Inc	HCP, Inc.
20081671	AT&T Inc	Deutsche Telekom AG	AT&T Mobility LLC f/k/a. Cingular Wirelless LLC. AT&T Mobility LLC F/k/a. Dobson Cellular Systems, LLC. T-Mobile USA, Inc.
20081677	Ameriprise Financial, Inc	H&R Block, Inc	HRB Financial Corporation.
20081685	Denbury Resources, Inc	Wapiti Energy, LLC	Wapiti Energy, LLC. Wapiti Gathering, LLC. Wapiti Operating, LLC.
20081686	Voting Trust Relating to Issued Share Cap. of Magnetar Cap.	Chaparral Energy, Inc	Chaparral Energy, Inc.
20081687	Black Canyon Direct Investment Fund, L.P.	Dr. Richard J. Malouf	All Smiles Dental Center, Inc.
20081690	Providence Equity Partners VI L.P ...	World Triathlon Corporation	World Triathlon Corporation.
20081691	Sempra Energy	EnergySouth, Inc	EnergySouth, Inc.
20081696	Billabong International Limited	Robert Kaplan	Da Kine Hawaii Corporation.
20081700	Community Health Systems, Inc	Empire Health Services	Empire Health Services. Inland Empire Hospital Services Association.
20081707	JPMorgan Chase & Co	Johnson & Johnson	Ethicon, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/09/2008			
20081698	Complete Production Services, Inc ..	Appalachian Well Services, Inc	Appalachian Well Services, Inc. Titan Wireline Services, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/10/2008			
20081688	4 Garages LLC	General Electric Company	UGP—Tower, LLC. Urban Growth Wabash. Randolph, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—09/11/2008			
20081650	The Goldman Sachs Group, Inc	Griffon Corporation	Griffon Corporation.
20081654	Lime Rock Partners IV, L.P	Industrial Rubber Products, Inc	Industrial Rubber Products, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/12/2008			
20081632	Humana Inc	Covenant Health	PHP Companies, Inc.
20081643	Cobham plc	Tyco Electronics Ltd	AMP Products Pacific Limited. Laser Diode, Inc. M/A—COM Eurotec B.V. M/A—COM, Inc. Tyco Electronics AMP GmbH. Tyco Electronics AMP Korea Limited. Tyco Electronics Corporation India Pvt. Limited. Tyco Electronics France SAS. Tyco Electronics H.K. Limited. Tyco Electronics Israel Ltd. Tyco Electronics Raychem GmbH. Tyco Electronics Raychem SA. Tyco Electronics (Shanghai) Co., Ltd. Tyco Electronics (Shenzhen) Co., Ltd. Tyco Electronics Singapore Pte Ltd. Tyco Electronics Svenska AB. Tyco Electronics UK Ltd. Tyco Holdings (Bermuda).

Trans No.	Acquiring	Acquired	Entities
20081682	GeNx360 Capital Partners, L.P	GSC Recovery IIA, L.P	No. 7 Ltd., Taiwan Branch.
20081703	AEP Industries Inc	Atlantis Plastics, Inc	Precision Partners, Inc.
20081711	Ecopetrol S.A	Chevron Corporation	Atlantis Plastic Films, Inc.
20081718	Fortune Brands, Inc	Pernod Ricard SA	Linear Films, Inc.
			Union Oil Company of California.
			Cruzan Viril, Ltd.
			The Absolut Spirits Company, Inc.
			V&S Vin Spirit AB.

TRANSACTIONS GRANTED EARLY TERMINATION—09/15/2008

20080831	Reed Elsevier PLC	ChoicePoint Inc	ChoicePoint Inc.
20080832	Reed Elsevier NV	ChoicePoint Inc	ChoicePoint Inc.
20080987	Fresenius Medical Care AG & Co. KGaA.	Daiichi Sankyo Company, Limited ..	Luitpold Pharmaceuticals, Inc.
20081648	Kulicke and Sofia Industries	Orthodyne Electronics Corporation ..	Orthodyne Electronics Corporation.
20081666	JDA Software Group, Inc	i2 Technologies, Inc	i2 Technologies, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—09/16/2008

20081683	The Middleby Corporation	TurboChef Technologies, Inc	TurboChef Technologies, Inc.
20081684	Johnson & Johnson	SurgRx, Inc	SurgRx, Inc.
20081695	Eli Lilly and Company	Monsanto Company	Monsanto Company.
20081706	Orkla ASA	Benson Holdings, Inc	Benson Industries LLC.
20081720	Assurant, Inc	General Electric Company	General Electric Company.
20081729	Alberto-Culver Company	The Procter & Gamble Company	Noxell Corporation.
20081735	Arbor Investments II, L.P	Bradshaw International, Inc	Bradshaw International, Inc.
20081737	J.P. Morgan Chase & Co	X-Rite, Incorporated	X-Rite, Incorporated.
20081738	The Hanover Insurance Group, Inc ..	AIX Holdings, Inc	AIX Holdings, Inc.
20081742	Covanta Holding Corporation	Ridgewood Electric Power Trust IV ..	Indeck Maine Energy, LLC.

TRANSACTIONS GRANTED EARLY TERMINATION—09/18/2008

20081783	Barclays PLC	Lehman Brothers Holdings Inc., a debtor-in-possession.	LB 745 LLC. Lehman Brothers Inc.
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TRANSACTIONS GRANTED EARLY TERMINATION—09/19/2008

20081665	Owens & Minor, Inc	Mr. George Burrows	The Burrows Company.
20081719	Chesapeake Energy Corporation	Cinco County Barnett Shale, LLC	DDJET Limited LLP.
20081743	Covanta Holding Corporation	Ridgewood Electric Power Trust V ..	Indeck Maine Energy, LLC.
V20081746	Riverside Capital Appreciation Fund V, L.P.	Commercial Markets Holdco, Inc	JohnsonDiversey Canada, Inc. JohnsonDiversey, Inc.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8-23330 Filed 10-3-08; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Declaration Under the Public Readiness and Emergency Preparedness Act**

October 1, 2008.

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to provide targeted liability protections for anthrax countermeasures based on a credible risk that the threat of exposure to *Bacillus anthracis* and the resulting disease constitutes a public health emergency.

DATES: This notice and the attached declaration are effective as of the date of signature of the declaration.

FOR FURTHER INFORMATION CONTACT:

RADM W.C. Vanderwagen, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205-2882 (this is not a toll-free number).

HHS Secretary's Declaration for Utilization of Public Readiness and Emergency Preparedness Act for Anthrax Countermeasures

Whereas significant changes in the nature, regularity and degree of threats to health posed by the use of infectious agents as weapons of biological warfare have generated increased concern for the safety of the general American population particularly following the deliberate exposure of citizens in the

United States to *Bacillus anthracis* (*B. anthracis*) spores in 2001 that demonstrated the ease of dissemination, infectivity, and mortality;

Whereas the Secretary of Homeland Security has determined that *B. anthracis* and multi-drug-resistant *B. anthracis* present a material threat against the United States population, sufficient to affect national security;

Whereas there are covered countermeasures to treat, identify, or prevent adverse health consequences or death from exposure to *B. anthracis*;

Whereas such countermeasures, including vaccines, antimicrobials/antibiotics, and antitoxins for pre-exposure and post-exposure prevention and treatment, diagnostics to identify such exposure, and additional countermeasures for treatment of adverse events arising from use of these countermeasures exist or may be the subject of research and/or development;

Whereas such countermeasures may be used and administered in accordance with Federal contracts, cooperative agreements, grants, interagency agreements, and memoranda of understanding, and may also be used and administered at the Regional, State, and local level in accordance with the public health and medical response of the Authority Having Jurisdiction;

Whereas, the possibility of governmental program planners obtaining stockpiles from private sector entities except through voluntary means such as commercial sale, donation, or deployment would undermine national preparedness efforts and should be discouraged as provided for in section 319F-3(b)(2)(E) of the Public Health Service Act (42 U.S.C. 247d-6d(b)) (“the Act”);

Whereas, immunity under section 319F-3(a) of the Act should be available to governmental program planners for distributions of Covered Countermeasures obtained voluntarily, such as by (1) Donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles;

Whereas, the extent of immunity under section 319F-3(a) of the Act afforded to a governmental program planner that obtains covered countermeasures except through voluntary means is not intended to affect the extent of immunity afforded other covered persons with respect to such covered countermeasures.

Whereas, in accordance with section 319F-3(b)(6) of the Act, I have

considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of such countermeasures with respect to the category of disease and population described in sections II and IV below, and have found it desirable to encourage such activities for the covered countermeasures; and

Whereas, to encourage the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in sections II and IV below, it is advisable, in accordance with section 319F-3(a) and (b) of the Act, to provide immunity from liability for covered persons, as that term is defined at section 319F-3(i)(2) of the Act, and to include as such covered persons such other qualified persons as I have identified in section VI of this declaration;

Therefore, pursuant to section 319F-3(b) of the Act, I have determined there is a credible risk that the threat of exposure of *B. anthracis* and the resulting disease constitutes a public health emergency.

I. Covered Countermeasures (As Required by Section 319F-3(b)(1) of the Act)

Covered Countermeasures are defined at section 319F-3(i) of the Act. At this time, and in accordance with the provisions contained herein, I am recommending the manufacture, testing, development, distribution, dispensing; and, with respect to the category of disease and population described in sections II and IV below, the administration and usage of anthrax countermeasures as defined in section IX below. The immunity specified in section 319F-3(a) of the Act shall only be in effect with respect to: (1) Present (see Appendix I) or future Federal contracts, cooperative agreements, grants, interagency agreements, or memoranda of understanding involving countermeasures that are used and administered in accordance with this declaration, and (2) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or

dispense the Covered Countermeasure following a declaration of an emergency, as defined in section IX below. In accordance with section 319F-3(b)(2)(E) of the Act, for governmental program planners, the immunity specified in section 319F-3(a) of the Act shall be in effect to extent they obtain Covered Countermeasures through voluntary means of distribution, such as (1) Donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles. For all other covered persons, including other program planners, the immunity specified in section 319F-3(a) of the Act shall, in accordance with section 319F-3(b)(2)(E) of the Act, be in effect pursuant to any means of distribution.

This declaration shall subsequently refer to the countermeasures identified above as “Covered Countermeasures.”

This declaration shall apply to all Covered Countermeasures administered or used during the effective time period of the declaration. This declaration also shall apply to all Covered Countermeasures (see Appendix I) administered or used by or on behalf of the Department of Defense.

II. Category of Disease (As Required by Section 319F-3(b)(2)(A) of the Act)

The category of disease, health condition, or threat to health for which I am recommending the administration or use of the Covered Countermeasures is anthrax, which may result from exposure to *B. anthracis*.

III. Effective Time Period (As Required by Section 319F-3(b)(2)(B) of the Act)

With respect to Covered Countermeasures administered and used in accordance with present or future Federal contracts, cooperative agreements, grants, interagency agreements, or memoranda of understanding, the effective period of time of this Declaration commences on signature of the declaration and extends through December 31, 2015.

With respect to Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction, the effective period of time of this Declaration commences on the date of a declaration of an emergency and lasts through and includes the final day that the emergency declaration is in effect including any extensions thereof.

IV. Population (As Required by Section 319F-3(b)(2)(C) of the Act)

Section 319F-3(a)(4)(A) of the Act confers immunity to manufacturers and distributors of the Covered Countermeasure, regardless of the defined population.

Section 319F-3(a)(3)(C)(i) of the Act confers immunity to covered persons who may be a program planner or qualified persons with respect to the Covered Countermeasure only if a member of the population specified in the declaration as persons who use the Covered Countermeasure or to whom such a Covered Countermeasure is administered, is in or connected to the geographic location specified in this declaration, or the program planner or qualified person reasonably could have believed that these conditions are met.

The populations specified in this declaration are all persons who use a Covered Countermeasure or to whom a Covered Countermeasure is administered in accordance with this declaration, including, but not limited to: Department of Defense military personnel and supporting civilian-employee and contractor personnel; any person conducting research and development of Covered Countermeasures directly by the Federal government or pursuant to a contract, grant, or cooperative agreement with the Federal government; any person who receives a Covered Countermeasure from persons authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasure, and their officials, agents, employees, contractors, and volunteers following a declaration of an emergency; any person who receives a Covered Countermeasure from a person authorized to prescribe, administer or dispense the countermeasure or who is otherwise authorized under an Emergency Use Authorization; any person who receives a Covered Countermeasure as an investigational new drug in human clinical trials being conducted directly by the Federal government or pursuant to a contract, grant, or cooperative agreement with the Federal government.

V. Geographic Area (As Required by Section 319F-3(b)(2)(D) of the Act)

Section 319F-3(a) of the Act applies to the administration and use of a Covered Countermeasure without geographic limitation.

VI. Qualified Persons (As Required by Section 319F-3(i)(8)(B) of the Act)

With regard to the administration or use of a Covered Countermeasure, Section 319F-3(i)(8)(A) of the Act defines the term "qualified person" as a licensed individual who is authorized to prescribe, administer, or dispense the Covered Countermeasure under the law of the State in which such Covered Countermeasure was prescribed, administered or dispensed. Additional persons who are qualified persons pursuant to section 319F-3(i)(8)(B) are the following: (1) Any person who is authorized to prescribe, administer, deliver, distribute or dispense Covered Countermeasures to Department of Defense military personnel and supporting civilian-employee and contractor personnel, (2) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency, and (3) Any person authorized to prescribe, administer, or dispense Covered Countermeasures or who is otherwise authorized under an Emergency Use Authorization, including, but not limited to Department of Defense military personnel and supporting civilian employee and contractor personnel.

VII. Additional Time Periods of Coverage After Expiration of Declaration (As Required by Section 319F-3(b)(3)(B) of the Act)

I have determined that, upon expiration of the time period specified in Section III above, an additional twelve (12) months is a reasonable period to allow for manufacturers and other covered persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasure, and the liability protection of section 319F-3(a) of the Act shall extend for that period. Further, as to doses shipped by the CDC to the DoD pursuant to the DoD/CDC Interagency Agreement (IAA) dated March 10, 2008, an additional period of time of liability protection shall extend for as long as the SNS or its successor exists and the IAA remains in effect, plus, if the additional twelve (12) months following the time period in Section III above has expired, an additional twelve (12) months upon expiration of the IAA.

VIII. Amendments

This declaration has not previously been amended. Any future amendment to this declaration will be published in the **Federal Register**, pursuant to section 319F-3(b)(4) of the Act.

IX. Definitions

For the purpose of this declaration, including any claim for loss brought in accordance with section 319F-3 of the PHS Act against any covered persons defined in the Act or this declaration, the following definitions will be used:

Administration of a Covered Countermeasure: As used in Section 319F-3(a)(2)(B) of the Act includes, but is not limited to, public and private delivery, distribution, and dispensing activities relating to physical administration of the Covered Countermeasures to patients/recipients, management and operation of delivery systems, and management and operation of distribution and dispensing locations.

Anthrax Countermeasure: Any vaccine; antimicrobial/antibiotic, other drug or antitoxin; or diagnostic or device to identify, prevent or treat anthrax or adverse events from such countermeasures (1) Licensed under section 351 of the Public Health Service Act; (2) approved under section 505 or section 515 of the Federal Food, Drug, and Cosmetic Act (FDCA); (3) cleared under section 510(k) of the FDCA; (4) authorized for emergency use under section 564 of the FDCA; (5) used under section 505(i) of the FDCA or section 351(a)(3) of the PHS Act, and 21 CFR Part 312; or (6) used under section 520(g) of the FDCA and 21 CFR part 812.

Authority Having Jurisdiction: The public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (e.g., city, county, tribal, State, or Federal boundary lines) or functional (e.g., law enforcement, public health) range or sphere of authority.

Covered persons: As defined at section 319F-3(i)(2) of the Act include the United States, manufacturers, distributors, program planners, and qualified persons. The terms "manufacturer," "distributor," "program planner," and "qualified person" are further defined at sections 319F-3(i)(3), (4), (6), and (8) of the Act.

Declaration of an emergency: A declaration by any authorized local, regional, State, or federal official of an emergency specific to events that indicate an immediate need to administer and use anthrax countermeasures, with the exception of

a federal declaration in support of an emergency use authorization under

section 564 of the FDCA unless such declaration specifies otherwise.

This first day of October, 2008.
Michael O. Leavitt,
 Secretary of Health and Human Services.

APPENDIX I—LIST OF U.S. GOVERNMENT CONTRACTS

Contract	Manufacturer	Covered countermeasure	PL 85–804 coverage*
HHSO100200500007C	Cangene	Anthrax immune globulin—AIG	No.
HHSO100200500006C	HGS	Anthrax monoclonal antibody-ABThrax	No.
HHSO100200600019C	Emergent Biodefense Operations	BioThrax (Anthrax Vaccine Adsorbed, AVA)	Yes.
HHSO100200700037C	Emergent Biodefense Operations	BioThrax (Anthrax Vaccine Adsorbed, AVA)	No.
W9113M-04-D-0002	BioPort (Emergent Biosolutions)	BioThrax (Anthrax Vaccine Adsorbed, AVA)	Yes.
DAMD 17-97-D-00003	BioPort (Emergent Biosolutions)	BioThrax (Anthrax Vaccine Adsorbed, AVA) Ship- ping.	Yes.
HHSN 272200700035C	Elusys	Anthrax monoclonal antibody—ETI-204	No.
HHSN 272200700033C	Pharmathene	Anthrax monoclonal antibody—Valortim	No.
HHSN 272200700034C	Emergent BioSolutions	Anthrax immune globulin—AIG	No.
NO1-A1-30052	Avecia (Pharmathene)	Recombinant protective antigen (rPA) anthrax vaccine.	No.
V797P-5777x	Shering Corp.	Cipro 250mg/5ml; 100ml suspension	No.
V797P-5977x	Cobalt Pharmaceuticals	Cipro 500mg tablets	No.
V797P-5941x	Blu Pharmaceuticals	Doxycycline 100mg tablets	No.
V797P-5883x	Pfizer, Inc	Doxycycline 25mg/5ml suspension 60ml	No.
V797P-5669x	Abraxis Bioscience, Inc	Doxycycline 100mg vial IV	No.
V797-DSNS-8002	Sandoz, Inc	Amoxicillin 500mg capsules	No.
V797-DSNS-8002	Sandoz, Inc	Amoxicillin 400mg/5ml; 100ml suspension	No.
V797BPA0015	Bedford Labs	Rifampin 600mg vial IV	No.
V797P-5396x	Hospira	Clindamycin 150mg/ml 6ml vial IV	No.
V797P-5669x	Abraxis Bioscience, Inc	Vancomycin 1 g vial IV	No.
V797P-1020x	McKesson	Penicillin GK 20 million unit vial IV	No.
V797P-5387x	Johnson and Johnson Healthcare	Levofloxacin 5mg/ml 150ml bag IV	No.

* Status of indemnification coverage under P.L. 85–804 (An Act to authorize the making, amendment and modification of contracts to facilitate the national defense.)

[FR Doc. E8-23547 Filed 10-1-08; 4:15 pm]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Determination and Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Health and Human Services (HHS) is issuing this notice pursuant to section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 360bbb-3(b)(4), to justify the emergency use of doxycycline hyclate tablets accompanied by emergency use information, contained in emergency kits for eligible United States Postal Service (USPS) Cities Readiness Initiative (CRI) participants and their household members in advance of a potential attack involving *Bacillus anthracis*. *Bacillus anthracis* is a

biological agent known to cause anthrax. The Secretary, HHS, provides notice of the determination of the Secretary of Homeland Security on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*, although there is no current domestic emergency involving anthrax, no current heightened risk of an anthrax attack, and no credible information indicating an imminent threat of an attack involving *Bacillus anthracis*. The Secretary also provides notice that, on the basis of such determination, he has declared an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued by the Food and Drug Commissioner under 21 U.S.C. 360bbb-3(a).

DATES: This Notice and referenced HHS declaration are effective as of October 1, 2008.

FOR FURTHER INFORMATION CONTACT: RADM W.C. Vanderwagen, M.D., Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human

Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205-2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The CRI, begun in 2004, is a federally supported effort to prepare 72 major U.S. metropolitan areas to effectively respond to a large-scale bioterrorist event by dispensing antibiotics to their entire identified population within 48 hours of the decision to do so. Over the past several years, HHS and the USPS have developed and tested in three U.S. cities—Seattle, Philadelphia and Boston—the ability of letter carriers to quickly deliver door-to-door a few days' worth of antibiotics to residential addresses. This quick-strike capability is intended to buy time for State and local public health authorities to set up points of dispensing for further provision of antibiotics across the community, as needed.

Under Section 564 of the FFDCA, the Secretary of Homeland Security may determine that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological chemical, radiological or nuclear agent or agents.

Based on such a determination, the Secretary of Health and Human Services may declare an emergency that justifies the authorization of a product that is not otherwise approved, licensed or cleared for commercial use (“unapproved product”) or is not approved, licensed, or cleared for a particular use (“unapproved use of an approved product”). Following that declaration, the Commissioner of the Food and Drug Administration (FDA) may issue an Emergency Use Authorization (EUA).

The Biomedical Advanced Research and Development Authority (BARDA) of the HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) has requested that FDA issue an EUA for doxycycline hyclate tablets accompanied by emergency use information for use by eligible USPS participants in the CRI and their household members. Doxycycline hyclate tablets are approved by the FDA for the post-exposure prophylaxis of anthrax. However, the doxycycline hyclate tablets for which BARDA seeks an EUA would be accompanied by emergency use information that is not included in any of the approved applications for doxycycline hyclate tablets. For this reason, an EUA is necessary. The September 23, 2008 determination by the Secretary of Homeland Security that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*, and the October 1, 2008 declaration by the Secretary of Health and Human Services based on that determination that there is an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information, enables the FDA Commissioner to issue an EUA for doxycycline hyclate tablet emergency kits under section 564(a) of the FFDCA, 21 U.S.C. 360bbb–3(a).

With issuance of the EUA, eligible letter carriers participating in the CRI may receive the doxycycline hyclate tablet emergency kits, if not medically contraindicated, for future use by them and other members of their households during an anthrax emergency, subject to the terms of the authorization. The antibiotics and accompanying information may help protect these letter carriers and household members against contracting anthrax if, following an outdoor anthrax attack, the USPS is called upon to deliver the same or similar antibiotics to homes across their community where people may have

been exposed to *Bacillus anthracis*. In an anthrax attack, time is of the essence in preventing illness and death by getting antibiotics to people who may have been exposed. By providing advance protection to letter carriers who willingly put themselves at risk by delivering antibiotics in an affected community, the unique capabilities of the USPS may be used to get antibiotics to those who need them quickly.

The USPS initiative and EUA are one part of the Federal Government’s strategy to encourage preparedness at all levels of government to enable the nation to respond effectively in the event of an anthrax emergency.

II. Determination of the Secretary of Homeland Security

On September 23, 2008, pursuant to section 564(b)(1)(A) of the FFDCA, 21 U.S.C. 360bbb–3(b)(1)(A), the Secretary of Homeland Security determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*. The Secretary of Homeland Security made this determination in a September 23, 2008 memorandum addressed to the Secretary of Health and Human Services. In that memorandum, the Secretary of Homeland Security stated that there is not currently a domestic emergency involving anthrax, there is not currently a heightened risk of an anthrax attack, and his Department has no credible information indicating an imminent threat of an attack involving *Bacillus anthracis*.

The Secretary of Homeland Security determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with *Bacillus anthracis*, on two bases: (1) The Department of Homeland Security has already found that an anthrax attack poses a material threat to the United States population sufficient to affect national security, which allows the Secretary to conclude that there is a non-negligible possibility that a heightened risk of attack will arise. The finding that an anthrax attack poses a material threat to the United States population sufficient to affect national security was made on January 20, 2004 regarding anthrax, and on September 22, 2006 regarding multi-drug resistant *Bacillus anthracis*, pursuant to section 319F–2(c)(2) of the Public Health Service (PHS) Act, 42 U.S.C. 247d–6b(c)(2). (2) Were the government to determine in the future that there is a heightened risk of an anthrax attack—if, for example, there were credible

information about an imminent threat of such an attack—that would almost certainly result in a domestic emergency. That is so, among other important reasons, because those exposed to *Bacillus anthracis* need to take appropriate antimicrobials rapidly after exposure to avoid contracting anthrax and because of the significant challenges to rapidly delivering such antimicrobials to those at risk in an anthrax emergency.

Given his determination that there is a significant potential for a domestic emergency, the Secretary of Homeland Security also urged the Secretary of Health and Human Services to employ all relevant emergency powers under section 564 of the FFDCA to ensure distribution of pre-need countermeasures that may be effective in preventing the contracting of anthrax by people in the delivery chain, such as USPS workers; first responders, including law enforcement; to essential government and non-government workers; and to the general public.

III. Declaration of the Secretary of Health and Human Services

On September 23, 2008, the Secretary of the Department of Homeland Security determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*. Pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of such determination, on October 1, 2008, I declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).

Dated: October 1, 2008.

Michael O. Leavitt,
Secretary.

[FR Doc. E8–23544 Filed 10–1–08; 4:15 pm]
BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

Time and Date:

October 14, 2008, 1 p.m.–5 p.m.

October 15, 2008, 8:30 a.m.–4:30 p.m.

Place: Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Hwy, Arlington, VA 22202.

Status: Open.

Purpose: The NCVHS Executive Subcommittee will hold a day and a half meeting to review the past year's accomplishments and conduct strategic planning for the coming year. On the afternoon of the first day, the Executive Subcommittee will review their 2008 activities, update operational work plans, and review Committee objectives and strategic plan for future NCVHS directions. On the second day the Subcommittee will continue strategic planning for future NCVHS directions, discuss collaborative activities with the Board of Scientific Counselors at the National Center for Health Statistics, the plans for updating the 21st Century Health Statistics, and the upcoming NCVHS 60th anniversary.

Contact Person for More Information:

Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 29, 2008.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E8–23438 Filed 10–3–08; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Standards Subcommittee.

Time and Date: October 14, 2008 8:30 a.m.–12 p.m.

Place: Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Hwy., Arlington, VA 22202.

Status: Open.

Purpose: The NCVHS Standards Subcommittee will hold a half day meeting to plan and discuss upcoming topics for hearings and recommendations.

Contact Person for More Information:

Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Denise Buenning, lead staff for Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Room S2–26–17, Baltimore, Maryland 21244, telephone (410) 786–6711; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Further information also is available on the NCVHS home page: <http://www.ncvhs.hhs.gov/>, where an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 30, 2008.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E8–23532 Filed 10–3–08; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Re-Designation of Head Start Grantees

AGENCY: U.S. Department of Health and Human Services.

ACTION: Notice; Federal Advisory Committee Act Meetings Announcement.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the third meeting of the Secretary's Advisory Committee on Re-designation of Head Start Grantees, Department of Health and Human Services (HHS). The meeting will be held on Tuesday, October 21, 2008, from 9 a.m. to 5:30 p.m., and on Wednesday, October 22, 2008, from 9 a.m. to 1 p.m. at the Hotel Palomar Arlington, 1121 North 19th Street, in Arlington, Virginia. The meeting will be open to the public; however, seating is limited and preregistration is encouraged (see below).

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, e-mail colleen.rathgeb@acf.hhs.gov or (202) 205–7378.

SUPPLEMENTARY INFORMATION: The Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134, Section 641(c)(2) [42 U.S.C. 9836]) requires the Secretary to develop a system for designation renewal to determine if Head Start agencies are delivering high-quality and comprehensive Head Start programs that meet the educational, health, nutritional, and social needs of the children and families they serve, and meet program and financial management requirements and the program performance standards. The Advisory Committee on Re-Designation of Head Start Grantees will provide advice and recommendations on the development of a transparent, reliable and valid system for designation renewal as required under the statute.

The third meeting of the Advisory Committee will be held on October 21–22, 2008, at the Hotel Palomar Arlington, which is located at 1121 North 19th Street, in Arlington, Virginia, one block from the Rosslyn Metro station. The Advisory Committee will review the results of the data analyses it requested from the Office of Head Start at its June meeting, discuss recommendations, and review a draft report. The meeting will be open to the public; however, seating is limited and preregistration is encouraged. To preregister, please e-mail AdvisoryCommittee@pal-tech.com with "Meeting Registration" in the subject line, or call Tara Nordlander at 703–243–0495 by 5 p.m. EST, October 17, 2008. Registration must include your name, affiliation, phone number, and days attending. If you require a sign language interpreter or other special assistance, please call Tara Nordlander at 703–243–0495 as soon as possible and no later than October 10, 2008.

Written comments may be submitted electronically to AdvisoryCommittee@pal-tech.com with "Public Comment" in the subject line. HHS recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment, and it allows HHS to contact you if further information on the substance of the comment is needed or if your comment cannot be read because of technical difficulties. HHS's policy is that HHS will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public record. If HHS cannot read your comment because of technical difficulties and cannot

contact you for clarification, HHS may not be able to consider your comment. Written comments to be available at the meeting will be accepted up to October 15, 2008.

Documents pertaining to Committee deliberations will be available upon written request after the meeting. Requests should be sent to AdvisoryCommittee@pal-tech.com with "Materials Request" in the subject line and should include your name, mailing address, and an e-mail address or other contact information.

Because of the Advisory Committee's full agenda and the timeframe in which to cover the agenda topics, there will be no opportunity for oral presentations from the public at this meeting. The public will be able to submit comments to AdvisoryCommittee@pal-tech.com both before and after the meeting; these will be included in the public record.

Dated: September 26, 2008.
Daniel Schneider,
Acting Assistant Secretary, Administration for Children and Families.
 [FR Doc. E8-23483 Filed 10-3-08; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.
OMB No.: 0970-0230.
Description: This is a proposed reinstatement of a previously approved

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,728.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 collection of information; (c) the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 30, 2008.
Robert Sargis,
Reports Clearance Officer.
 [FR Doc. E8-23404 Filed 10-3-08; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee State-of-Origin Report (Form ORR-11).
OMB No.: 0970-0043.
Description: The information collection of the ORR-11 (Refugee State-

information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270.

Specifically, the Department of Health and Human Services (HHS) will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires the Office of Refugee Resettlement to compile and maintain data on the secondary migration of refugees within the United States after arrival. In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the United States. (The first three digits of the social security number indicate the State of residence of the applicant.) Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report, which is included in ORRs Annual Report to Congress. The primary use of the data is to quantify and analyze the refugee secondary services formula allocation.

Respondents: State, local and tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR-11 State-of-Origin Report	50	1	4.33	216.65

Estimated Total Annual Burden Hours: 216.65.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2008.

Janean Chambers,
Reports Clearance Officer.
 [FR Doc. E8-23499 Filed 10-3-08; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; Supplemental Grant Awards

AGENCY: Family and Youth Services Bureau, ACYF, ACF, DHHS.
ACTION: Notice to award supplemental grants.

CFDA #: 93.592.

Legislative Authority: Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*)

Amount of Award: \$145,000.

Project Period: September 30, 2008–September 29, 2009.

SUMMARY: This notice announces that the Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), will award a program expansion supplement award to the Family Violence Prevention Fund (FVPF) in San Francisco, CA to continue the provision of technical support through the Family Violence Prevention and Services (FVPSA) Discretionary Grant Program. FVPF is a leading provider of training and technical assistance for service providers who seek to improve collaboration between domestic violence and child welfare programs. The supplemental award will enable FVPF to plan and implement State-level strategies to educate policy makers and to ensure that State Domestic Violence Coalitions are key stakeholders in the Child and Family Service Review process.

FOR FURTHER INFORMATION CONTACT: Marylouise Kelley, Director, Family Violence Prevention and Services Program, 1250 Maryland Avenue, SW., Washington, DC 20024. Telephone: 202-401-5756. E-mail: marylouise.kelley@acf.hhs.gov.

Dated: September 29, 2008.

Joan E. Ohl,
Commissioner, Administration on Children, Youth and Families.
 [FR Doc. E8-23478 Filed 10-3-08; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Family and Youth Services Bureau, ACYF, ACF, DHHS.
ACTION: Notice to award a replacement grant.

CFDA#: 93.616.

Legislative Authority: Social Security Act, Section 439, as amended by the Child and Family Services Improvement Act of 2006 (Pub. L. 109-288).

Amount of Award: \$85,000.

Project Period: September 30, 2008–September 29, 2009.

SUMMARY: The Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), herein announces the awarding of a Mentoring Children of Prisoners (MCP) replacement grant to Mother Seton House, Inc., in Virginia Beach, VA. A prior grantee recently relinquished their MCP grant. With the funds provided, Mother Seton House, Inc., will continue the provision of mentoring services for children of incarcerated parents in Hampton Roads, VA.

FOR FURTHER INFORMATION CONTACT: Curtis O. Porter, Acting Associate Commissioner, Family and Youth Services Bureau, 1250 Maryland Avenue, SW., Washington, DC 20024, Phone: 202-205-8102.

Dated: September 29, 2008.

Joan E. Ohl,
Commissioner, Administration on Children, Youth and Families.
 [FR Doc. E8-23481 Filed 10-3-08; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Family and Youth Services Bureau, ACYF, ACF, DHHS.

ACTION: Notice to award 27 expansion supplements.

CFDA #: 93.616.

Legislative Authority: Social Security Act, Section 439, as amended by the Child and Family Services Improvement Act of 2006 (Pub. L. 109-288).

Project Period: September 30, 2008–September 29, 2009.

Amount of Award: \$2,462,128.

SUMMARY: The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB),

herein announces the awarding of 27 program expansion supplemental awards in the amount of \$2,462,128 in Fiscal Year (FY) 2008 funds to grantees under the Mentoring of Children of Prisoners (MCP) program. The additional funding will supplement

awards to grantees that have demonstrated the capacity to make quality matches and currently are making significant process in reaching their match goal. The 27 supplemental awards will enable MCP grantees to

reach more children of incarcerated parents who are in need of mentoring.

The following grantees are receiving program expansion supplemental funds for a 12-month project period of September 30, 2008–September 29, 2009:

Grantee organization	City, state	Amount
Big Brothers Big Sisters of Colorado (Pike's Peak)	Denver, CO	\$10,000
Big Brothers Big Sisters of Northeastern Arizona	Show Low, AZ	105,930
Travis High School Educational Foundation	Austin, TX	60,000
Big Brothers Big Sisters of the Heart of Georgia	Macon, GA	34,650
Big Brothers Big Sisters of San Diego County, Inc	San Diego, CA	66,330
Big Brothers Big Sisters of Ventura County, Inc	Ventura, CA	48,216
Clemson University	Clemson, GA	56,473
Big Brothers Big Sisters of Eastern Missouri	St. Louis, MO	198,000
Mother Seton House, Inc	Virginia Beach, VA	27,128
City of Longview	Longview, TX	42,575
Break the Barriers	Fresno, CA	190,000
Big Brothers Big Sisters of Utah	Salt Lake City, UT	99,000
Big Brothers Big Sisters of Massachusetts	Atlanta, GA	63,831
Big Brothers Big Sisters of the Capital Region, Inc	Albany, NY	76,598
Be-A-Friend Program, Inc., Big Brothers Big Sisters of Erie County	Buffalo, NY	198,000
Children's Home Society	Charleston, WV	72,971
United Communities of Southeast Philadelphia	Philadelphia, PA	59,400
America on Track	Santa Ana, CA	86,879
Big Brothers Big Sisters of Central California	Fresno, CA	55,239
Big Brothers Big Sisters of Central Ohio	Columbus, OH	150,000
Community Solutions of El Paso, Inc	El Paso, TX	99,000
Families Under Urban and Social Attack	Houston, TX	74,250
Deep East TX Council of Governments	Jasper, TX	53,815
Big Brothers Big Sisters of Southeast Louisiana	New Orleans, LA	170,000
Volunteers of America of Greater New Orleans	New Orleans, LA	236,093
Serving Children and Adolescents in Need	Laredo, TX	53,500
Hour Children, Inc	Long Island City, NY	74,250

FOR FURTHER INFORMATION CONTACT:

Curtis O. Porter, Acting Associate Commissioner, Family and Youth Services Bureau, 1250 Maryland Avenue, SW., Washington, DC 20024, Phone: 202-205-8102.

Dated: September 29, 2008.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. E8-23482 Filed 10-3-08; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families

AGENCY: Family and Youth Services Bureau, ACYF, ACF, DHHS.

ACTION: Notice to award supplemental grants.

CFDA#: 93.592.

Legislative Authority: Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.)

Amount of Award: \$145,000.

Project Period: September 30, 2008–March 31, 2009.

SUMMARY: This notice announces that the Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), will award a program expansion supplement to the National Latino Alliance for the Elimination of Domestic Violence (NLAEDV), in New York, NY. The additional funds will enable the grantee to continue the provision of technical support through the Family Violence Prevention and Services Discretionary Grant Program. The NLAEDV has provided national-level training and has developed guidelines and training tools that are culturally proficient for services to Latino victims and survivors of domestic violence and their families. The supplemental award will support the dissemination of products and curriculum developed by NLAEDV through training for State Domestic Violence Coalitions and their member programs, presentations at national conferences, targeted education and outreach efforts, and technical assistance.

FOR FURTHER INFORMATION CONTACT: Marylouise Kelley, Director, Family

Violence Prevention and Services Program, 1250 Maryland Avenue, SW., Washington, DC 20024. Telephone: 202-401-5756. E-mail: marylouise.kelley@acf.hhs.gov.

Dated: September 29, 2008.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. E8-23480 Filed 10-3-08; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

ACTION: Notice of a Noncompetitive Successor Award to California Department of Public Health.

CFDA #: 93.576

Legislative Authority: This Program is authorized by section 412(b)(5) of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1522(b)(5)), which

authorizes the Director to provide for medical screening and initial medical treatment.

Amount of Award: There are three years remaining in the project. The remaining funds to be awarded is \$1,425,000.

Project Period: July 1, 2006 through June 30, 2010.

SUMMARY: The purpose of the ORR award is to assist California in providing medical screenings in accordance with ORR guidance in State Letter 95-37, 11/21/95, and follow-up activities to newly arriving refugees for conditions of public health concern. California Senate Bill 162 established a new California Department of Public Health to take the place of the California Department of Health Services which ceased to exist. California requests that the funds be awarded to the new California Department of Public Health to carry out the remaining years of the project.

FOR FURTHER INFORMATION CONTACT:

Further information regarding the request may be directed to Pam Green-Smith at 202-401-4531, pamela.greensmith@acf.hhs.gov.

Date: September 30, 2008.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E8-23479 Filed 10-3-08; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2005-N-0098] (formerly Docket No. 2005N-0349)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Survey of Current Manufacturing Practices in the Food Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Current Manufacturing Practices in the Food Industry" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of May 8, 2007 (72 FR

26132), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0628. The approval expires on August 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: September 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-23606 Filed 10-3-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Neurogenetics SEP.

Date: October 23, 2008.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435-1277, lepeg@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oral Biology and Physiology.

Date: October 23, 2008.

Time: 2 p.m. to 4:30 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: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435-1787, chenp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Animal Models of Memory, Learning and Impulsivity.

Date: October 24, 2008.

Time: 1 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: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435-1507, niw@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Development.

Date: November 3-4, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, koellerk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psychopathology and Adult Disorders.

Date: November 3, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Estina E. Thompson, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301-496-5749, thompsones@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflict: Cardiovascular Epidemiology and Genetics.

Date: November 3, 2008.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Oncology.

Date: November 3, 2008.

Time: 3 p.m. to 5:30 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: Angela Y. Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301-435-1715, nga@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemical and Biophysical Sciences Fellowship.

Date: November 4-5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, ruvinser@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Sensory II.

Date: November 4-5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435-1242, driscolb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Bioengineering and Imaging.

Date: November 5-6, 2008.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435-2392, masoodk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biophysics of RNA-Protein Interactions.

Date: November 5-6, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435-1153, revzina@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuronal GPCR and Drug Discovery.

Date: November 5-6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451-1328, hamelinc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Protein Dynamics in Enzyme Catalysis.

Date: November 5-7, 2008.

Time: 10 a.m. to 12:01 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435-2037, mackj2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: November 5, 2008.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, (301) 435-1783, beusseb@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes, and Genetics Specials.

Date: November 5-6, 2008.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 E. Lombard Street, Baltimore, MD 21202.

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435-0601, marinomi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Longevity.

Date: November 6-7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435-1147, mschmidt@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemistry and Biophysics SBIR/STTR Panel.

Date: November 6, 2008.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Carlyle Suites Hotel, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301-435-1789, smithvo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: November 7, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301-402-6411, bertiros@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychopathology, Developmental Disabilities, Stress and Aging.

Date: November 7, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Estina E. Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301-496-5749, thompsones@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diabetes, Obesity, Nutrition and Reproduction Sciences.

Date: November 7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Conference Centers, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Krish Krishnan, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435-1041, krishnak@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 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23447 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special emphasis Panel, October 27, 2008, 8 a.m. to October 28, 2008, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 25, 2008, 73 FR 55517-55519.

The meeting will be held November 12, 2008, 4 p.m. to November 14, 2008, 8 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23449 Filed 10-3-08; 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 "Joint Program"

Date: October 15, 2008

Time: 10 a.m. to 11:30 a.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: Norman Chang, Ph.D., 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) 496-1485, changn@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23585 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of these discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: October 21, 2008.

Open: October 21, 2008, 8 a.m.-3:15 p.m.

Agenda: Environmental Factors in Cancer.

Place: Omni Severin Hotel, 40 West Jackson Place, Indianapolis, IN 46204.

Closed: October 21, 2008, 4 p.m.-7 p.m.

Agenda: Discussion of testimony given in open session on Environmental Factors in Cancer; consideration of thematic concepts for the 2009/2010 series.

Place: Omni Severin Hotel, 40 West Jackson Place, Indianapolis, IN 46204.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 220, MSC 8349, 6116 Executive Boulevard, Bethesda, MD 20892, 301/451-9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 10, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23591 Filed 10-3-08; 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; Multi-Center Clinical Trials in Gliomas.

Date: November 6, 2008.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, MD, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, BETHESDA, MD 20892, (301) 594-1279, meekert@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase II Bridge Awards to Accelerate the Development of New Cancer Therapies and Cancer Imaging Technologies toward Commercialization (SBIR [R44]).

Date: November 12-13, 2008.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892-7405, 301-496-7575, palekarl@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Pediatric Brain Tumor Consortium.

Date: November 19, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: C. Michael Kerwin, PhD, MPH, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8057, Bethesda, MD 20892-8329, 301-496-7421, kerwinm@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 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23590 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of 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 Drug Abuse Special Emphasis Panel; MIDARP.

Date: October 10, 2008.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nadine Rogers, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-402-2105, rogersn2@nida.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23446 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Superfund Basic Research and Training Program.

Date: November 5-7, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Durham Marriott Convention Center, 201 Foster Street, Durham, NC 27701.

Contact Person: Linda K Bass, PHD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; The NIP Technical Reports Preparation Support Services.

Date: November 6, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-0752, mcgee1@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk

Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23450 Filed 10–3–08; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; T Cell Co-Stimulation Pathways-PO1.

Date: October 29, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Rebecca L. Jorgenson, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, jorgensonr@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23451 Filed 10–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: October 27–28, 2008.

Time: October 27, 2008, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: October 28, 2008, 8:30 am to 1 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Unit on Neuroplasticity, the Child Psychiatry Branch, the Section on Childhood Neuropsychiatric Disorders, and the Unit on Brain Imaging; to evaluate Principal Investigators, Training Fellows and Staff Scientists and Clinicians.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: October 28, 2008, 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Dawn M. Johnson, Ph.D., Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, 10 Center Drive, Building 10, Room 4N222, Bethesda, MD 20892, 301–402–5234, dawnjohnson@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23580 Filed 10–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, October 15, 2008, 10 a.m. to October 15, 2008, 12 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on September 26, 2008, 73FR55859.

The meeting date has been changed to November 4, 2008 and the time has been changed to start at 3 p.m. and end at 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23587 Filed 10–3–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, November 15, 2008, 10 am to November 15, 2008, 12 pm, National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on September 26, 2008, 73FR55859.

The meeting date has been changed to November 14, 2008 and the time has been changed to start at 11 a.m. and end at 5 p.m. The meeting location remains

the same. The meeting is closed to the public.

Dated: September 30, 2008.

Jennifer Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23596 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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 Mental Health Special Emphasis Panel; Community Based Participatory Research.

Date: October 31, 2008.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-1225, aschulte@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-23599 Filed 10-3-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Complaint Management System

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Request for a new collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Complaint Management System. This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 5, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and

included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Complaint Management System.

Form Number: None.

Abstract: CBP is creating the Complaint Management System (CMS) in order to allow anybody who has interacted with CBP, either as a result of importing or exporting goods, traveling to or from the U.S., seeking a job, or simply living in an area where CBP conducts operations such as border patrol checkpoints, to file a complaint or comment about their CBP experience through an on-line portal.

Current Actions: This submission is being made to establish a new information collection.

Type of Review: New collection of information.

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses: 3,000.

Estimated Time Per Response: 23 minutes.

Estimated Total Annual Burden Hours: 1,199.

Dated: September 29, 2008.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E8-23578 Filed 10-3-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5187-N-56]

Moving to Work Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

All PHAs are required to submit annual plans, however, PHAs with Moving to Work demonstration agreements (29 at the time of submission of this request) the annual MTW plan and annual MTW report are submitted in lieu of the standard annual

and 5 year PHA plans. Revisions are being made to this 50900 form so that the Department is able to better respond to Congressional and other inquiries regarding outcome measures obtained and promising practices learned throughout the duration of the demonstration.

DATES: *Comments Due Date: November 5, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577-0216) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax: 202-395-6974.*

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian.L.Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Moving to Work Demonstration.

OMB Approval Number: 2577-0216.

Form Numbers: HUD-50900 "MTW Annual Plan and Report Elements."

Description of the Need for the Information and its Proposed Use: All PHAs are required to submit annual plans, however, PHAs with Moving to Work demonstration agreements (29 at the time of submission of this request) the annual MTW plan and annual MTW report are submitted in lieu of the standard annual and 5 year PHA plans. Revisions are being made to this 50900 form so that the Department is able to better respond to Congressional and other inquiries regarding outcome measures obtained and promising practices learned throughout the duration of the demonstration.

Frequency of Submission: Annually.

	Number of respondents	Annual respondents	x	Hours per response	=	Burden hours
Reporting Burden	29	2		60		3,480

Total Estimated Burden Hours: 3,480.
Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 29, 2008.

Lillian L. Deitzer,
Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8-23459 Filed 10-3-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5130-N-29]

Privacy Act of 1974; Notification of the Establishment of a New System of Records, Financial Data Mart (FDM, A75R),

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the Establish of a New Privacy Act System of Records.

SUMMARY: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The purpose of the

proposed new system of records, identified as the Financial Data Mart (FDM, A75R) will be used by HUD's Chief Financial Office to store financial, limited personnel, vendor, and customer data.

DATES: Effective Date: This action will be effective without further notice on November 5, 2008 unless comments are received that would result in a contrary determination.

Comments Due Date: November 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451

Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402-8073 or Gail B. Dise, Assistant Chief Financial Office for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3100, Washington, DC 20410, Telephone Number (202) 708-1757. (These are not toll free numbers.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Government Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, 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 June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: September 23, 2008.

Lisa Schlosser,

Chief Information Officer.

HUD/CFO-06

NAME:

Financial Data Mart (FDM, A75R).

SYSTEM LOCATION:

HUD Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Financial data, limited personnel data, vendor data, and customer data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950 31 U.S.C. 66a. (Pub. L. 81-784).

PURPOSE(S):

To provide the Department decision makers with an online, web enabled data warehouse. FDM is the primary reporting tool used to generate internal ad-hoc reports, scheduled event driven reports, and queries. This system supports program area managers, budget officers, and management staff by providing centralized, uniformed financial information, event driven reports, and an ad-hoc financial analysis tool. FDM supports essential functions of the Office of Housing (OH), Office of Public and Indian Housing (PIH), Office of Community Planning and Development (CPD), Policy Development and Research (PDR), and other HUD support offices. There is no public access to this system. This system is for internal use only.

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, other routine uses are as follows: The system is used as a data warehouse. It contains personal data about individuals including names, addresses, and social security numbers. It is used by the Department for analysis, management reports, and interagency reporting. There are over 400 users with customized report capability.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy documents are stored in the secure cabinets; electronic files are stored on servers

RETRIEVABILITY:

By social security number; name; address; user-id; deposit account number; routing number.

SAFEGUARDS EMPLOYED INCLUDE:

Background screening, limited authorizations and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords.

RETENTION AND DISPOSAL PROCEDURES:

Are in accordance with GSA schedules of retention and disposal. HUD Handbook 2225.6 Records Disposition Schedule Appendix 14, HUD Handbook 2228.1 Records Disposition Schedule Management Chapter 9, and HUD Handbook 2228.2 General Records.

SYSTEM MANAGER(S) AND ADDRESS:

Gail B. Dise, Assistant Chief Financial Office for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3100, Washington, DC 20410, Telephone Number (202) 708-1757.

NOTIFICATION PROCEDURES:

For information assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate 451 Seventh Street, SW., Room 4178, Washington, DC, in accordance with the procedures in 24 CFR part 16.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Department of Housing and Urban Development (HUD), 451 Seventh Street, SW., Room 4178, Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appears in 24 CFR part 16. If additional information is needed, contact (i) in relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street, SW., room 4178,

Washington, DC 20410; and (ii) in relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; financial institutions, private corporations or firms doing business with HUD; Federal agencies; HUD personnel.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8-23470 Filed 10-3-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5130-N-28]

Privacy Act of 1974; Notification of the Intent To Establish a New Privacy Act System of Records, Personal Services Cost Subsystem (PSCS, A75I)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the Intent to Establish a New Privacy Act System of Records.

SUMMARY: HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The purpose of the proposed new system of records, identified as Personal Services Cost Subsystem (PSCS, A75I), is to obtain payroll costs for the Department from the National Finance Center (NFC).

DATES: *Effective Date:* This action will be effective without further notice on November 5, 2008 unless comments are received that would result in a contrary determination.

Comments Due Date: November 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT:

Donna Robinson-Staton, Departmental Privacy Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington DC 20410, telephone number (202) 402-8073 or Gail B. Dise, Assistant Chief Financial Office for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3100, Washington, DC 20410, Telephone Number (202) 708-1757. (These are not toll free numbers.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Government Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, 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 June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: September 23, 2008.

Lisa Schlosser,
Chief Information Officer.

HUD/CFO-05**NAME:**

Personal Services Cost Subsystem (PSCS, A75I).

SYSTEM LOCATION:

HUD Headquarters in Washington DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Numbers (SSNs), Employee Names, Banking Information (bank routing and deposit account number), Employee Payroll Costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950 31 U.S.C. 66a. (Pub. L. 81-784).

PURPOSE(S):

The purpose of the system of records is to obtain payroll cost from NFC. Additionally, PSCS sends the payroll costs to HUDCAPS for accounting of the payroll. PSCS is necessary since it sends HUD's payroll costs to HUDCAPS and impacts HUD's financial reporting to the Office of Management and Budget (OMB). There is no public access to this system. This is for internal use only. Additionally, PSCS converts the NFC code to HUD organizational codes then transmits the converted codes and payroll costs to HUD's Central Accounting and Program System (HUDCAPS) for accounting of the payroll. The system has 2 users with READ ONLY privileges.

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, other routine uses are as follows: To HUDCAPS to record accounting of payroll cost.

POLICIES AND PRACTICES FOR STORING; RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Hard copy documents are stored in the secure cabinets; electronic files are stored on servers.

RETRIEVABILITY:

By Social Security Number; name.

SAFEGUARDS EMPLOYED INCLUDES:

Background screening, limited authorizations and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords.

RETENTION AND DISPOSAL:

Are in accordance with GSA schedules of retention and disposal. HUD Handbook 2225.6 Records Disposition Schedule Appendix 65, HUD Handbook 2228.1 Records Disposition Schedule Management Chapter 9, and HUD Handbook 2228.2 General Records Schedule

SYSTEM MANAGER(S) AND ADDRESS:

Gail B. Dise, Assistant Chief Financial Office for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3100, Washington, DC 20410, Telephone Number (202) 708-1757.

NOTIFICATION PROCEDURE:

For information assistance, or inquiry about existence of records, contact the Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410 in accordance with the procedures in 24 CFR part 16.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records and for applicants wanting to appeal initial agency determination appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; financial institutions, private corporations or firms doing business with HUD; Federal agencies; HUD personnel.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8-23471 Filed 10-3-08; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5130-N-27]

Privacy Act; Notification of an Amendment to an Existing Privacy Act System of Records; Inventory Management System (IMS) (Formerly—The Public and Indian Housing Information Center (PIC))

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of an Amendment to a Privacy Act System of Records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend one of its Privacy Act record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is to reflect changes in the system name, location, new system managers and current updates to the "Purpose" and "Systems Security Measures" statements. This system is managed and operated by HUD's Office of Public and Indian Housing. IMS replaces the former Public and Indian Housing Information Center (PIC) system. The notice for the PIC system was published at 67 FR 20986. This record system supports the administration of programs for families receiving housing assistance for those entities that administer HUD's Office of Public and Indian Housing rental assistance programs. The entities that administer PIH's rental assistance programs are the Public Housing Authorities (PHAs). Additionally, as part of HUD's oversight responsibility, the collected data maintained in IMS is used to calculate the amount of subsidy authorized and disbursed to PHAs and to monitor PHAs' overall performance and use of HUD funds. The existing scope, objectives, and business processes in place for this program remain unchanged.

System Security Measures: The availability and data in IMS are important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the use of the information to HUD's oversight responsibility, and access to the IMS is controlled by using the Web Access Security System (WASS) security module, which requires users to use the single sign-on security interface. WASS consists of a secure connection component and a secure systems component. WASS provides an overall security umbrella for thousands of HUD-wide system users. The secure connection component of WASS includes online registration forms that are accessible via the World Wide Web and are used by HUD's trusted Business Partners to submit requests for the authority to access secure systems that reside behind HUD's firewall. The data captured by the secure connection registration page is used to establish authorized user on the Lightweight Directory Access Protocol (LDAP) server. Secure connection provides system level security by validating users against the LDAP server prior to providing users access to HUD's Secure System environment from the internet by: (1) The WASS module controls a user's

access, updates access, read-only access, and approval access based on the user's role and security access level; (2) unauthorized system access is reduced by restricting access by job function and by the use of user identifications (User IDs) and password and user IDs that are utilized to identify the transaction by users; (3) inaccurate and incomplete data are identified and eliminated with extensive edits; and (4) data corruption/destruction is handled by limiting user IDs that have update rights to the production server/databases.

Data Quality: PHAs enter management, building and unit inventory details, and family information into IMS. Family data includes the families' names, social security numbers (SSN), and dates of birth. The social security number search feature was established to help HUD maintain data quality and integrity and to support one of its strategic objectives to prevent fraud and abuse. This search feature: (1) Helps to confirm that those families entitled to benefits receive benefits; (2) assists in limiting the duplication of benefits; and (3) helps to prevent submission of false applications for benefits, thereby ensuring data quality.

DATES: *Effective Date:* This action shall be effective without further notice on *November 5, 2008* unless comments are received that would result in a contrary determination.

Comments Due Date: November 5, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, Telephone Number (202) 402-8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, this notice is HUD's

notification of its intent to amend this system of records for IMS, HUD/PIH-4. Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the amended system of records, and require published notice of the existence and character of the system of records.

The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: September 15, 2008.

Lisa Schlosser,
Chief Information Officer.

HUD/PIH-4

SYSTEM NAME:

Inventory Management System (IMS) formerly known as the Public and Indian Housing (PIH) Information Center (PIC).

SYSTEM LOCATION:

IMS system servers are located in Charleston, WV; and access is through the Internet. The servers are maintained by HUD Information Technology Services (HITS) contractor, and HUD's information technology partners: Electronic Data Services (EDS) and Lockheed Martin.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families receiving rental housing assistance via programs administered by the Department of Housing and Urban Development, State Agencies, PHAs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system: Records consist of automated building and unit inventory details, family composition details, income, and rent data obtained from PHAs. More specifically, the system of records contains: Identification information such as names and social security numbers for individuals 6 years and older; alien registration information; address and tenant unit numbers; financial data such as income, adjustments to income, tenant family composition characteristics such as family size, sex of family members, information about the family that would qualify them for certain adjustments or for admission to a project limited to a special population (e.g., elderly,

handicapped, or disabled); relationships of members of the household to the head of household (e.g., spouse, child); preferences applicable to the family at admission; income status at admission; race and ethnicity of household members; unit characteristics such as number of bedrooms; geographic data obtained by the PHA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- The U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*;
- The Housing Community Development Act of 1981, Public Law 97-35, 85 stat., 348,408 requires applicants and residents to provide the information collected; and
- The Housing and Community Development Act of 1987, 42 U.S.C. 3543, requires applicants and residents to provide the SSN(s) of household members at least six (6) years old.
- Title VI of the Civil Rights Act of 1962 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19).

PURPOSE:

An applicant for public housing completes or a PHA representative assists in filling out an application that determines an applicant's eligibility for public housing assistance. The following information assists in the eligibility determination: (1) Names of all persons who will be living in the unit, their sex, race, date of birth, and relationship to the family head; (2) Present address and telephone number; (3) Family characteristics (e.g., veteran) or circumstances (e.g., living in substandard housing) that might qualify the family for tenant selection preferences) or disability; (4) Names and addresses of current and previous landlords for information concerning the family's suitability as a tenant; (5) An estimate of the family's anticipated income for the next twelve months and the sources of that income; (6) The names and addresses of employers, banks, and any other information the PHA would need to verify income and deductions, and to verify the family composition. A housing official may visit the present home to interview the applicant and applicant's family members to see how the present home is managed and maintained.

IMS also allows PHAs to electronically submit information to HUD that is related to the administration of HUD's Public and Indian Housing programs. It collects data for PIH operations, including data submitted via the Internet from HUD's field offices and HUD's business partners, and accurately tracks activities and processes. IMS also helps to

increase sharing of information throughout the Office of Public and Indian Housing, which improves staff awareness of activities related to the administration of HUD-subsidized housing programs. IMS is a flexible, scaleable, Internet-based integrated system, which enables PHA users and HUD personnel to access a common database of PHA information via their web browser. IMS aids HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of Federal rental assistance programs; (b) Detecting abuses in assisted housing programs; (c) Taking administrative or legal actions to resolve past abuses of assisted housing programs; (d) Deterring abuses by verifying the employment and income of applicants and tenants at the time of occupancy and at re-certification via the PIH-REAC Enterprise Income Verification (EIV); (e) evaluating the effectiveness of income discrepancy resolution actions taken by PHAs for HUD's rental assistance programs; (f) Evaluating program effectiveness; (g) Improving the reporting rate; (h) Forecasting budgets; (i) Controlling funds; and (j) Updating building and unit data. The Public and Indian Housing's IMS system serves as a repository for automated information used when comparing family income data reported, by recipients of Federal rental assistance, to income data received from external sources.

RECORDS IN IMS ARE SUBJECT TO USE IN AUTHORIZED AND APPROVED COMPUTER MATCHING PROGRAMS REGULATED UNDER THE PRIVACY ACT OF 1974, AS AMENDED. ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the uses cited in the section of this document titled "Purposes", other routine uses may include:

1. To federal, state, and local agencies (e.g., state agencies administering the state's unemployment compensation laws, state welfare and food stamp agencies, U.S. Office of Personnel Management, U.S. Social Security Administration, and the Office of Child Support Enforcement Center's National Directory of New Hires database) to verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs through HUD's tenant income computer matching program;
2. To individuals under contract to HUD or under contract to another

agency with funds provided by HUD for the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing certifications/re-certifications;

3. To Public Housing Agencies (PHAs) to verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received and to complete and submit Occupancy report, SEMAP certification, PHA contact information, and upload Form 50058. Any information shared back to the PHAs will pertain only to that PHA's operations, no other PHA's operations;

4. To private owners of assisted housing to verify the accuracy and completeness of applicant and tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

5. To PHAs, owners and management agents, and contract administrators to identify and resolve discrepancies in tenant data;

6. To the Social Security Administration and Immigration and Naturalization Service to verify alien status and continued eligibility in HUD's rental assistance programs; and

7. To researchers affiliated with academic institutions, with not-for-profit organizations, or with federal, state or local governments, or to policy researchers without individual identifiers (name, address, social security number) for the performance of research and statistical activities on housing and community development issues

BELOW ARE OTHER ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM AND THE PURPOSES OF SUCH USES:

1. PHA complete and submit Occupancy report, SEMAP certification, PHA contact information, upload Form 50058.
2. Field Offices review SEMAP certifications, review, and approve or reject occupancy reports, resolve Form 50058 errors.
3. Web Access SubSystem (WASS) authenticates user name and password before user can access Public Indian Housing (PIH)-IMS.
4. Line of Credit Control System/Program Accounting System (LOCCS/PAS) feeds funding data such as grant details to the public housing authorities.

5. PHA scoring data produced by Integrated Asset Subsystem (NASS) provides the data to PIH-IMS.

6. HUD Central Accounting and (HUDCAPS) data mart provides financial management info to PIH, Housing Inventory, Management reports, and Module 50058.

7. Voucher management System serves as the source of leased units for voucher funded assistance to PIH-IMS.

8. PIH-IMS provides Form 50058 data on a monthly basis for the Enterprise Income Verification system (EIV) for the purpose of computer matching.

9. PIH-IMS also shares census tract data with the Geo coding Service Center system.

10. PIH-IMS provides information for performance reporting and data that assists in the budget formulation for the Capital Fund.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in family case files in the PHAs and electronically in office automation equipment. Records are stored on HUD computer servers for field office and public housing agencies' access via the Internet to: (1) Obtain social security and supplemental security income data that are not subject to provisions of 26 U.S.C. 6103; and (2) update actions taken in resolving income discrepancies. Software in IMS precludes the transfer of any data subject to 26 U.S.C. 6103 to unencrypted media. All of the IMS data is store on HUD's Servers. The disk and backup files are maintained by HUD's information technology partners—Electronic Data Services (EDS) and Lockheed Martin. The original (hard copy) files are stored in the originating PHA.

IRRETRIEVABILITY:

Records are retrieved by an individual's SSN.

SAFEGUARDS:

These are the measures used to protect the records from unauthorized access or disclosure:

1. The REAC-IT Web Access Secure SubSystem (WASS) provides audit logging for all system access via WASS's authentication of all users. Audit logging in WASS includes a keystroke logger which covers every keystroke of any user with in WASS.

2. WASS provides authentication methods that meet NIST requirements. Every user has a WASS ID and is authenticated via WASS.

3. The IMS System maintains record of each user's logons, logoffs, and logoff exceptions if any.

4. For each user, IMS system logs the number requests for web pages containing privacy data. The number of page view requests are tracked per page per session. The first and last timestamp of access for every privacy page is also recorded per session.

5. IMS system archives the user privileges data when a user is removed from the system or when the unmasked privacy data viewing privileges are modified.

6. Hard copy records are stored in lock file cabinets in rooms to which access is limited to those personnel who service the records.

7. Background screening, limited authorization and access with access limited to authorize personnel.

RETENTION AND DISPOSAL:

Electronic records are maintained and destroyed according to the HUD Records Disposition Schedule 2225.6. Records are maintained for a period of three years.

SYSTEM MANAGERS(S) AND ADDRESSES:

Gary Faeth, Acting IT Division Director for Public and Indian Housing Information Management, Potomac Center, 550 Twelfth Street, SW., First Floor, Washington, DC 20410, Telephone Number, (202) 475-8730 or Hitesh Doshi, IMS Information Technology Manager, Potomac Center, 550 Twelfth Street, First Floor, SW., Washington, DC 20410, Telephone Number, (202) 475-8940.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records and for applicants wanting to appeal initial agency determination appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy

Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

IMS receives data from field office staff, federal government agencies, state and local agencies, private data sources, owners and management agencies. Public Housing Agencies (PHAs) routinely collect personal and income data from participants in and applicants for HUD's public and assisted housing programs. The data collected by PHAs is entered into IMS via the system itself by VPN, via PHA-owned software, or via HUD's Family Reporting software (FRS)

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8-23473 Filed 10-3-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-2008-N0093]

Koyukuk/Nowitna National Wildlife Refuges, Galena, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment for Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife Refuges; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft revised comprehensive conservation plan (Draft CCP) and environmental assessment (EA) for the Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife Refuges (Refuge) is available for public review and comment. In this Draft CCP and EA we describe two alternatives, including our preferred action, to manage the Refuge for the next 15 years. Also available for public review and comment are draft compatibility determinations.

DATES: Comments on the Draft CCP and EA must be received on or before December 15, 2008.

ADDRESSES: You may view or obtain copies of the Draft CCP and EA by any of the following methods. You may request a paper copy, a summary, or a CD-ROM containing both.

Agency Web Site: Download a copy of the documents at <http://alaska.fws.gov/nwr/planning/plans.htm>.

E-mail: FW7_Koyukuk/Nowitna_planning@fws.gov. Please include "Revised CCP" in the subject line of the message.

Mail: Robert Lambrecht, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 287, Galena, Alaska 99741.

In-Person Viewing or Pickup: Call (907) 786-3357 to make an appointment during regular business hours at the USFWS Regional Office, 1011 E. Tudor Road, Anchorage AK 99053 or call (907) 656-1231 to make an appointment during business hours at the Koyukuk/Nowitna Refuge in Galena, AK.

FOR FURTHER INFORMATION, CONTACT: Robert Lambrecht at the address above or (907) 656-1231; fax: (907) 656-1708; or fw7_Koyukuk/Nowitna_planning@fws.gov.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife Refuges. We started this process through a notice in the **Federal Register** (72 FR 57343; October 9, 2007).

Background

The ANILCA (16 U.S.C. 410hh *et seq.*, 43 U.S.C. 1602 *et seq.*) requires development of a CCP for all national wildlife refuges in Alaska. The Draft CCP and EA for the Refuge was developed consistent with Section 304(g) of ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act (16 U.S.C. 668dd *et seq.*). The purpose of developing CCPs is to provide refuge managers with a 15-year management strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish, wildlife, and habitat management and conservation; legal mandates; and Service policies. Plans define long-term goals and objectives toward which refuge management activities are directed and identify which uses may be compatible with the purposes of the refuge. They identify wildlife-dependent recreation opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Comprehensive conservation plans are updated in accordance with planning direction in Section 304(g) of ANILCA and with NEPA (42 U.S.C. 4321 *et seq.*).

Background: In 1980, ANILCA designated the Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife

Refuges. Refuge boundaries encompass approximately 7.329 million acres of which approximately 6.044 million acres (82 percent) are under Service jurisdiction. Section 302(3)(B) of ANILCA states that the purposes for which the Refuge was established include: (i) To conserve fish and wildlife populations and habitats in their natural diversity; (ii) to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide the opportunity for continued subsistence use by local residents; and (iv) to ensure water quality and necessary water quantity within the Refuge. CCPs and Environmental Impact Statements were completed for the Refuge in 1987 following direction in Section 304(g) of ANILCA.

The ANILCA requires us to designate areas 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 management categories (Minimal, Moderate, Intensive, Wilderness, and Wild River). Appropriate activities, public uses, commercial uses, and facilities are identified for each management category. Three management categories (Minimal, Wilderness, and Wild River) apply to the Refuge.

The 1997 Refuge Improvement Act includes additional direction for conservation planning throughout the National Wildlife Refuge System. This direction has been incorporated into national planning policy for the National Wildlife Refuge System, including refuges in Alaska. This draft revision of the Koyukuk, Northern Unit Innoko, and Nowitna CCP/EA meets the requirements of both ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act.

Issues raised during scoping and addressed in the Draft CCP/EA are (1) Management of wildlife populations, especially moose; (2) future off-refuge mining, oil, and gas developments; (3) contaminants and their effects on wild foods and water quality; (4) the effects of climate change; (5) maintaining the wild character of the Refuge and wilderness quality; (6) future public use; (7) how the fire management program can help villages address their hazardous fuel accumulations; and (8) the need for more outreach and better communication with the public.

The Draft CCP and EA describe and evaluate two alternatives for managing the Refuge for the next 15 years. These alternatives follow much of the same general management direction.

Alternative A (the No-Action Alternative) is required under NEPA and describes continuation of current management activities. Alternative A serves as a baseline against which to compare the other alternative. Under Alternative A, management of the Refuge would continue to follow direction described in the 1987 CCPs and records of decision as modified by subsequent program-specific plans (e.g., fisheries, cultural resources, and fire management plans). Currently 91 percent of the Refuge is in Minimal management, 7 percent is designated Wilderness, and 2 percent is in Wild River management. Alternative A would continue to protect and maintain the existing wildlife values, natural diversity, and ecological integrity of the Refuge. Human disturbances to fish and wildlife habitats and populations would be minimal. Private and commercial uses of the Refuge would not change, and public uses employing existing access methods would continue to be allowed. Opportunities to pursue traditional subsistence activities, and recreational hunting, fishing, and other wildlife dependent activities, would be maintained. Opportunities to pursue research would be maintained.

Alternative B (the Proposed Action) would generally continue to follow management direction described in the 1987 CCPs and records of decision as modified by subsequent program-specific plans, but some of that management direction has been updated by changes in policy since the 1987 Koyukuk and Northern Unit Innoko and Nowitna Refuge CCPs were approved. Alternative B identifies these specific changes in management direction as well as goals and objectives for Refuge management.

Public Meetings

We will continue to involve the public through open houses, meetings and comments. We will mail notices of availability to our Refuge mailing list. Public meetings will be held in the following Refuge area communities: Galena, Hughes, Huslia, Kaltag, Koyukuk, Nulato, Ruby, and Tanana. Details will be announced locally in advance of each meeting.

Public Availability of Comments

Before including your name, 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. We will make all comments from individual persons part of the official public record. We will handle requests for such comments in accordance with the Freedom of Information Act, NEPA, and Departmental policies and procedures.

Dated: September 29, 2008.

Gary Edwards,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E8-23526 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2008-N0187; 60120-1113-0000; C4]

Endangered and Threatened Wildlife and Plants; 5-Year Reviews of Three Wildlife Species and Eight Plant Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information on 11 species.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) initiate 5-year reviews of three wildlife species and eight plant species under the Endangered Species Act of 1973, as amended (Act) (see Table 1 under

SUPPLEMENTARY INFORMATION). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews, we will make recommendations as to whether each of these species is properly classified under the Act.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than December 5, 2008. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review the information that we receive on these species, see “Public Solicitation of New Information.”

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person under “Public Solicitation of New Information.” Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY (telephone typewriter or teletypewriter) assistance.

SUPPLEMENTARY INFORMATION:

Why Do We Conduct a 5-Year Review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain the List of Endangered and Threatened Wildlife and Plant Species (List) at 50 CFR 17.11 and 17.12. We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we

conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, we consider a species for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)). Any change in Federal classification requires a separate rulemaking process. Therefore, we are requesting submission of any new information (best scientific and commercial data) on these species that is relevant to our review under section 4(c)(2)(A).

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces initiation of our active review of the species in Table 1.

TABLE 1—SUMMARY OF LISTING INFORMATION

Common name	Scientific name	Status	Where listed (current range)	Final listing rule
ANIMALS				
June sucker	<i>Chasmistes liorus</i>	Endangered	Entire (UT)	51 FR 10851; 03/31/1986.
Pawnee montane skipper	<i>Hesperia leonardus montana</i>	Threatened	Entire (CO)	52 FR 36176; 09/25/1987.
Wyoming toad	<i>Bufo hemiophrys baxteri</i>	Endangered	Entire (WY)	49 FR 1992; 01/17/1984.
PLANTS				
Barneby reed-mustard	<i>Schoenocrambe barnebyi</i>	Endangered	Entire (UT)	57 FR 1403; 01/14/1992.
Barneby ridge-cress	<i>Lepidium barnebyanum</i>	Endangered	Entire (UT)	55 FR 39864; 09/28/1990.
Blowout Penstemon	<i>Penstemon haydenii</i>	Endangered	Entire (NE, WY)	52 FR 32929; 09/01/1987.
Clay-loving wild-buckwheat	<i>Eriogonum pelinophilum</i>	Endangered	Entire (CO)	49 FR 28565; 07/13/1984.
Clay reed-mustard	<i>Schoenocrambe argillacea</i>	Threatened	Entire (UT)	57 FR 1403; 01/14/1992.
Maguire primrose	<i>Primula maguirei</i>	Threatened	Entire (UT)	50 FR 33734; 08/21/1985.
North Park phacelia	<i>Phacelia formosula</i>	Endangered	Entire (CO)	47 FR 38540; 09/01/1982.
Shrubby reed-mustard	<i>Schoenocrambe suffrutescens</i>	Endangered	Entire (UT)	52 FR 37420; 10/06/1987.

What Information Do We Consider in Our Review?

In our 5-year review, we consider all new information available at the time of the review. These reviews will generally consider the best scientific and commercial data that have become available since the original listing determination or most recent status

review of each species, such as—(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions, including but not limited to amount, distribution, and suitability; (C) Conservation measures that have been implemented to benefit the species; (D)

Threat status and trends (see five factors under heading “How do we determine whether a species is endangered or threatened?”); and (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened

Wildlife and Plants, and improved analytical methods.

Public Solicitation of New Information

We request any new information concerning the status of the wildlife species June sucker, Pawnee montane skipper, and Wyoming toad, and of the plant species *Schoenocrambe barnebyi*, *Lepidium barnebyanum*, *Penstemon haydenii*, *Eriogonum pelinophilum*, *Schoenocrambe argillacea*, *Primula maguirei*, *Phacelia formosula*, and *Schoenocrambe suffrutescens*. See "What Information Do We Consider in Our Review?" for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of the species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered.

Our practice is to make information, including names and home addresses of respondents, available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your response, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your submission to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mail or hand-deliver information on the following species to the U.S. Fish and Wildlife Service, Field Supervisor, at the corresponding address below. You also may view information we receive in response to this notice, as well as other documentation concerning these species that is contained in our files, at the following locations by

appointment, during normal business hours.

June sucker: Larry Crist, Utah Field Supervisor, U.S. Fish and Wildlife Service, Attention: June sucker 5-year Review, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone (801) 975-3330. For species-specific information, contact Marianne Crawford at (801) 975-3330, extension 134.

Pawnee montane skipper: Susan Linner, Field Supervisor, Colorado Field Office, Ecological Services, P.O. Box 25486, MS-65412, Denver Federal Center, Denver, Colorado 80225; telephone (303) 236-4773. For species-specific information, contact Leslie Ellwood at (303) 236-4747.

Wyoming toad: Brian Kelly, Wyoming Field Supervisor, U.S. Fish and Wildlife Service, Attention: Wyoming toad 5-year Review, 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009; telephone (307) 772 2374. For species-specific information, contact Jan McKee at (307) 772 2374, extension 234.

Lepidium barnebyanum, *Primula maguirei*, *Schoenocrambe barnebyi*, *Schoenocrambe argillacea*, and *Schoenocrambe suffrutescens*: Larry Crist, Utah Field Supervisor, U.S. Fish and Wildlife Service, Attention: *Lepidium barnebyanum*, *Primula maguirei*, *Schoenocrambe barnebyi*, *Schoenocrambe argillacea*, or *Schoenocrambe suffrutescens* 5-year Review, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone (801) 975-3330. For species-specific information, contact Larry England (801) 975-3330, extension 138.

Penstemon haydenii: John Cochnar, Assistant Project Leader, U.S. Fish and Wildlife Service, Attention: *Penstemon haydenii* 5-year Review, 203 West Second Street, Federal Building, Second Floor, Grand Island, Nebraska 68801; telephone (308) 382-6468. For species-specific information, contact Martha Tacha at (308) 382-6468, extension 19.

Eriogonum pelinophilum and *Phacelia formosula*: Al Pfister, Western Colorado Project Leader, U.S. Fish and Wildlife Service, Attention: *Eriogonum pelinophilum* or *Phacelia formosula* 5-year Review, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946; telephone (970) 243-2778. For species-specific information, contact Ellen Mayo at (970) 243-2778, extension 14.

How Are These Species Currently Listed?

Table 1 provides current listing information. The List, covering all listed species, is available on our Internet site

at <http://endangered.fws.gov/wildlife.html#Species>.

Definitions Related to This Notice

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature;

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range; and

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist); (b) reclassify the species from endangered to threatened (downlist); or (c) remove the species from the List (delist). If we determine that a change in classification is not necessary, then the species will remain on the List under its current status.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 16, 2008.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E8-23232 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R1-ES-2008-N00172; 10120-1112-0000-F2]

Proposed Willamette Valley Native Prairie Habitat Programmatic Safe Harbor Agreement for the Fender's Blue Butterfly in Benton, Lane, Linn, Marion, Polk, and Yamhill Counties, OR**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability; receipt of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to issue itself an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act), for a programmatic Safe Harbor Agreement (Agreement). The proposed term of the Agreement is 15 years, and the proposed term of the permit is 25 years. In accordance with regulation, the Service is completing the application process for this proposed permit. The requested permit would authorize the Service to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the federally-listed endangered Fender's blue butterfly (*Icaricia icarioides fenderi*) and the threatened Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*) by enrolling them under the Agreement as Cooperators through issuance of Certificates of Inclusion. The covered area or geographic scope of this Agreement includes the known and potential range of the Fender's blue butterfly, which occurs on prairie habitat within Benton, Lane, Linn, Marion, Polk, and Yamhill counties of Oregon. We request comments from the public on the permit application, proposed Agreement and related documents, which are available for review (see **ADDRESSES** below).

DATES: Comments must be received from interested parties on or before November 5, 2008.

ADDRESSES: You may submit your written comments to: Project Leader, Fish and Wildlife Service, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266, or facsimile (503) 231-6195. Include your name and address in your comments and refer to the "Willamette Valley Programmatic Safe Harbor Agreement." Copies of the draft documents are available for public inspection, by appointment, at the above address during normal business

hours. You may also view the documents on the Internet at <http://www.fws.gov/oregonfwo/species/>.

FOR FURTHER INFORMATION CONTACT: For further information or to receive copies of the documents on CD ROM, please contact Richard Szlemp at (503) 231-6179.

SUPPLEMENTARY INFORMATION: Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-federal property owners to implement conservation efforts for listed species by assuring that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). These permits allow future incidental take of covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms of the permit and accompanying agreement.

The Service has developed the proposed Agreement for the conservation of the Fender's blue butterfly. The Fender's blue butterfly was listed as an endangered species by the Service in 2000 (65 FR 3875). As of the time of its listing, it was known to occupy only 32 sites across 408 acres (165 hectares). Of the 32 sites found to support Fender's blue butterfly, Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*) has been documented as co-occurring as a larval host plant at 27 of the sites (65 FR 3875).

The geographical area covered by this Agreement includes the known and potential range of the Fender's blue butterfly within the Willamette Valley in Benton, Lane, Linn, Marion, Polk, and Yamhill counties of Oregon. Properties that are eligible for enrollment are non-Federal lands where the butterfly occurs or could occur through colonization, translocation, or reintroduction. Activities under the Agreement are also expected to benefit Kincaid's lupine, a federally-listed as threatened plant. However, Kincaid's lupine is not included as a "covered species."

The Fender's blue butterfly is threatened due to few populations, low numbers, and habitat fragmentation. Conserving existing populations and actively maintaining, enhancing, and expanding the size of existing butterfly-occupied habitat patches is essential for recovery. In addition, reestablishing habitat connectivity by creating stepping stones of habitat between existing butterfly populations will improve the prospects for individuals to reach other suitable habitats for reproduction, dispersal, and recolonization (71 FR 63874). This Agreement is intended to encourage non-federal landowners to undertake proactive conservation and restoration actions for the Fender's blue butterfly (and Kincaid's lupine).

Site-specific plans will be developed for each property to be enrolled. In addition to the monitoring, one or more of the following on-the-ground activities will be included in the plans: (a) Removal of invasive, non-native herbaceous plants and woody vegetation; (b) revegetation with native species; (c) collection of Kincaid's lupine seed and plant material for use in species recovery efforts; (d) reintroduction and augmentation of Kincaid's lupine; and (e) reducing threats. Environmental baseline conditions for the Fender's blue butterfly will be established on each property as lands are enrolled.

The programmatic nature of the Agreement provides eligible landowners with a streamlined process for obtaining assurances that specified actions taken to benefit the Fender's blue butterfly will not result in additional regulatory obligations under the Act. Without the regulatory assurances provided through the Agreement and permit, landowners may otherwise be unwilling or reluctant to engage in activities that would benefit the Fender's blue butterfly on their properties.

A draft Environmental Action Statement now available for public review (see **ADDRESSES**) indicates that the proposed Agreement and permit decision may be eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*).

The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and the requirements under NEPA. All comments received, including names and addresses, will become part of the administrative record and will be available for review pursuant to section

10(c) of the Act. Individual respondents may request that we withhold their home addresses and telephone numbers to the extent allowable by law. If you wish us to withhold this personal information, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Service's Oregon Fish and Wildlife Office (OFWO). The OFWO will serve as the permit holder, and may extend coverage to interested, eligible landowners for the take of Fender's blue butterfly, incidental to otherwise lawful activities in accordance with the terms of the Agreement, Certificates of Inclusion and permit. Please note that the Service will not be receiving any assurances as holder of the permit, but permitted landowners will. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Dated: August 8, 2008.

David J. Wesley,

Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.
[FR Doc. E8-23556 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-956-1420-BK-TRST, ES-055522 Group 62, Louisiana]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Louisiana.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

Contact Information: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The plat represents the dependent resurvey of lands held in trust by the United States of America for the Tunica-Biloxi Indian Tribe in Township 2 North, Range 3 East of the Louisiana Meridian, Louisiana. The survey was accepted on September 15, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: September 16, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8-23509 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-956-1420-BK-TRST, ES-055523 Group 20, North Carolina]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

Contact Information: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The plat represents the dependent resurvey of a portion of the Cathcart Tract, lands held in trust by the United States of America for the Eastern Band of the Cherokee Indians in Swain County, North Carolina. The survey was accepted on September 10, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our

consideration of the protest. We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: September 16, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8-23510 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

National Park Service

Special Resource Study, Environmental Impact Statement, Blackstone River Valley, Massachusetts and Rhode Island

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement, Blackstone River Valley Special Resource Study.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for a Special Resource Study (SRS) of landscape features and sites that contribute to the understanding of the Blackstone River Valley National Heritage Corridor as the birthplace of the Industrial Revolution in the United States. This study was mandated by Public Law 109-338, the "John H. Chafee Blackstone River Valley National Heritage Corridor Reauthorization Act of 2006."

The Blackstone River Valley National Heritage Corridor encompasses 24 communities located along the Blackstone River and its tributaries spanning from Worcester, MA to Providence, RI. Within the boundaries of the heritage corridor lie approximately 400,000 acres of land and over 500,000 people. The waters of the Blackstone River powered the Slater Mill, a National Historic Landmark, in Pawtucket, RI, America's first successful textile mill. This creative spark contributed to the nation's historic evolution as a global industrial and technological power.

The Blackstone River Valley National Heritage Corridor was established by Public Law 99-647 in November 1986 for the purpose of preserving and interpreting for educational and inspirational benefit of present and future generations the unique and

significant contributions to our national heritage of certain historic and cultural lands, waterways and structures within the states of Massachusetts and Rhode Island. The heritage corridor was to provide a management framework to assist the states of Massachusetts and Rhode Island and their units of local government in the development and implementation of integrated cultural, historical and land resource management programs in order to retain, enhance and interpret the significant values of the lands, waters and structures of the corridor.

The purpose of this Special Resource Study/EIS is to provide Congress with information about the national significance, suitability, and feasibility of sites and landscape features within the corridor that are associated with American industrial history for possible inclusion in the National Park System. The study will develop alternative options for management and interpretation of the sites and landscape features under consideration.

The draft report of the study, with the draft EIS, is expected to be completed and available for public review by late 2009.

ADDRESSES: Additional information about the study/EIS may be obtained online at <http://www.nps.gov/blac> and <http://parkplanning.nps.gov>. Requests to be added to the project mailing list should be directed to Ellen Carlson, Project Manager, at the address below.

FOR FURTHER INFORMATION CONTACT: Ellen Carlson, Project Manager, National Park Service, Northeast Region, 15 State Street, Boston, Massachusetts 02109, 617-223-5048.

Dated: July 14, 2008.

Michael T. Reynolds,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E8-23307 Filed 10-3-08; 8:45 am]

BILLING CODE 4312-52-M

DEPARTMENT OF THE INTERIOR

National Park Service

Resource Protection Study, Final Environmental Impact Statement, Curecanti National Recreation Area, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (EIS) for the Resource Protection Study (RPS), Curecanti National Recreation Area.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Final Environmental Impact Statement for the Resource Protection Study for Curecanti National Recreation Area, Colorado.

Alternatives Evaluated

Alternative 1: No Action (Continuation of Existing Conditions)

Under Alternative 1, the No Action Alternative, NPS would continue to manage the natural, cultural, and recreational resources of Curecanti National Recreation Area (NRA), and associated facilities, pursuant to Reclamation law, NPS law, the 1965 Memorandum of Agreement between NPS and Reclamation (1965 MOA), and other applicable laws and regulations. Reclamation would continue to manage the three dams and reservoirs, power plants, access roads, and other related facilities, to meet the purposes of the Colorado River Storage Project Act (CRSP); would continue to manage the East Portal area to meet the purposes of the Uncompahgre Project; and would continue to have unrestricted access to their lands and land interests, water and water interests, and facilities; pursuant to Reclamation law, the 1965 MOA, and other applicable laws and regulations. There would be no significant change in the NRA boundary. However, a permanent NPS presence would not be assured under this alternative.

Alternative 2: Proposed Action

Under Alternative 2, the Proposed Action, NPS would manage the same natural, cultural, and recreational resources and facilities as Alternative 1, pursuant to Reclamation law, NPS law, including new legislation establishing the NRA with 10,040 acres of additional agreed-upon neighboring agency lands, a revised MOA with Reclamation, and other applicable laws and regulations. Reclamation would manage their same facilities and areas of responsibility as Alternative 1, and would have unrestricted access to their lands and land interests, water and water interests, and facilities, pursuant to Reclamation law, the revised NOA, and other applicable laws and regulations. NPS would be authorized to work in partnership with private landowners within a Conservation Opportunity Area of 24,300 acres outside the NRA boundary, to implement a variety of tools, including acquiring interests in land from willing landowners, such as fee simple acquisition and conservation easements, which would promote the

long-term conservation of resources. A permanent NPS presence would be assured under this alternative, which is also the environmentally preferred alternative.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at <http://parkplanning.nps.gov/cure>; in the office of the Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230, Tel: (970) 641-2337; at the Montrose Public Lands Center, 2505 South Townsend Avenue, Montrose, CO 81401, Tel: (970) 240-5300; and at the following locations: Colorado State University Library in Fort Collins, Crawford Public Library, Delta Public Library, Gunnison County Library (Crested Butte and Gunnison branches), Hotchkiss Public Library, Mesa County Library in Grand Junction, Montrose Public Library, Paonia Public Library, and Western State College Library in Gunnison.

FOR FURTHER INFORMATION CONTACT: Connie Rudd, Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230; Tel: (970) 641-2337 x. 220; E-mail: connie_rudd@nps.gov.

Dated: April 9, 2008.

Rick M. Frost,

Acting Regional Director, Intermountain Region, National Park Service.

Editorial Note: This document was received by the Office of the Federal Register on September 29, 2008.

[FR Doc. E8-23308 Filed 10-3-08; 8:45 am]

BILLING CODE 4310-EX-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-454 and 731-TA-1144 (Final)]

Welded Stainless Steel Pressure Pipe From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-454 (Final) under section 705(b) of the Tariff Act of

1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731-TA-1144 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of welded stainless steel pressure pipe, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

DATES: *Effective Date:* September 2, 2008.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Haines (202-205-3200), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a

result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of welded stainless steel pressure pipe, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on January 30, 2008, by Bristol Metals (Bristol, TN), Felker Brothers Corp. (Marshfield, WI), Marcegaglia USA Inc. (Munhall, PA), Outokumpu Stainless Pipe, Inc. (Schaumburg, IL), and the United Steel Workers of America (Pittsburgh, PA).

Participation in the investigations 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 final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. *Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 18, 2008, and a public version will be issued

thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 13, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 7, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 9, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in *camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 6, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 23, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 23, 2009. On February 11, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 13, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as circular welded austenitic stainless steel pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials ("ASTM") A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) Welded stainless steel mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

sections 201.6, 207.3, 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). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: September 30, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-23457 Filed 10-3-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that, on September 30, 2008, a proposed Consent Decree in *United States v. Merit Energy Company, LLC and Shell Exploration & Production Co.*, Civil Action No. 1:08-cv-917 (W.D. Mich.) was lodged with the United States District Court for the Western District of Michigan. The Consent Decree addresses alleged violations of the Clean Air Act, 42 U.S.C. 7401-7671q, and its implementing regulations at a natural gas processing facility that is located approximately eight miles northeast of Manistee, Michigan. Shell Exploration & Production Co. ("Shell") constructed the facility in the late 1970s

and Shell owned and operated the facility until it sold it to Merit Energy Company, LLC ("Merit") in December 2003. The facility includes a natural gas sweetening unit that is used to separate sulfur-containing compounds from natural gas extracted from nearby production wells. The facility also has two Claus sulfur recovery units that recover elemental sulfur from the concentrated sulfur-containing gases generated by the sweetening unit.

The proposed Consent Decree would resolve the claims alleged in the Complaint in exchange for the Defendants' commitment to implement appropriate injunctive relief, pay a \$500,000 civil penalty, and perform a \$1 million Supplemental Environmental Project. Among other things, the injunctive relief provisions of the Decree would require Merit to eliminate all routine emission of sulfur dioxide from the facility by September 1, 2009, either by shutting the facility down or by installing and operating a separately-permitted acid gas injection control system. The Decree also would impose strict limits on emissions from the facility in non-routine situations, such as during any control equipment malfunction. Shell and Merit are jointly liable for payment of the \$500,000 civil penalty under the Decree. Finally, the Decree would require Merit to perform a Supplemental Environmental Project, at a cost of at least \$1 million, that would involve reducing air pollutant emissions from gas-fired compressors at several other gas handling facilities near the Manistee natural gas processing facility.

The Department of Justice will receive comments relating to the Consent Decree 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 mailed either electronically to pubcomment-ees.enrd@usdoj.gov or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. Comments should refer to *United States v. Merit Energy Company, LLC and Shell Exploration & Production Co.*, Civil Action No. 1:08-cv-917 (W.D. Mich.) and D.J. Ref. No. 90-5-2-1-09003.

The Consent Decree may be examined at: (1) The offices of the United States Attorney, 330 Ionia Avenue, NW., Suite 501, Grand Rapids, Michigan; and (2) the offices of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department

of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, 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 \$14.50 (58 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8-23423 Filed 10-3-08; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1490]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of Meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is announcing the fall meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), which will be held in San Diego, CA October 19-21, 2008.

Dates and Locations: The meeting will be held at the Courtyard Marriot San Diego-Old Town, 2345 Jefferson Street, San Diego, CA 92110 at the following times: Sunday, October 19, 2008, 4 to 5:15 p.m.; Monday, October 20, 2008, 8:30 a.m. to 12:15 p.m. and 1:45 to 5:30 p.m.; and Tuesday, October 20, 2008; 8 to 11 a.m.. The meeting is open to the public. On Sunday, October 19th, there will be a meeting of the FACJJ steering sub-committee from 5:30 to 8 p.m. that will be open to the public. However, the FACJJ sub-committee and work group meetings scheduled for Sunday, October 19, 2008 from 3 to 4 p.m. and on Monday, October 20, 2008 from 12:15 p.m. to 1:45 p.m. are closed to the public.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, Robin.Delany-Shabazz@usdoj.gov, or 202-307-9963. [Note: This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2) will meet to carry out its advisory functions under Section 223(f)(2)(C-E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of one representative from each state and territory. FACJJ duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information, including a member list, may be found at <http://www.facjj.org>.

For security purposes, members of the public who wish to attend open sessions should register online at <http://www.facjj.org>. Should problems arise with web registration, call Daryel Dunston at 240-221-4343. [Note: this is not a toll-free telephone number.] Notification of intent to attend should be sent by October 14, 2008. Note: Photo identification will be required for admission. Additional identification documents may be required.

Agenda

1. Sunday, October 19, 2008.
 - 3 p.m.–4 p.m. Meetings of Planning Sub Committee and Annual Report Sub Committee Work Groups (Closed Meetings);
 - 4 p.m.–5:15 p.m. Call to Order of FACJJ, Preview of the Agenda; Remarks of OJJDP Administrator, Overview of the 2009 Report Drafts, Small Group Assignments; and Close. (Open Session);
 - 5:30 p.m.–8 p.m. Meeting of the Steering Sub Committee. (Open Meeting);
2. Monday, October 20, 2008.
 - 8:30 a.m.–12:15 p.m. Call to Order; Steering Sub Committee Report Out; Discussion of the Summary Report of Responses to the FACJJ 2008 Request for Information, Instructions for Review of Report Draft Discussion; Review of Report Draft in Work Groups; and Statements from Nominees for Officers and Elections. (Open Session);
 - 12:15 p.m.–1:45 p.m. Working Lunch/Sub Committee Meetings (Closed Session);
 - 1:45 p.m.–5:30 p.m. Sub Committee Report Outs; Further Review and Discussion of 2009 Annual Report Draft

in Work Groups, Report Outs, Next Steps, and Close. (Open Session);

3. Tuesday, April 8, 2008.

- 8 a.m.–11 a.m. Call to Order; Completion of Discussion of Reports; Presentation and Discussion, “Developing DMC Action Plans”; Summary and Adjournment. (Open Session).

For security purposes, members of the FACJJ and of the public who wish to attend, must pre-register online at <http://www.facjj.org> no later than Tuesday, October 14, 2008. Should problems arise with web registration, call Daryel Dunston at 240-221-4343. [Note: these are not toll-free telephone numbers.]

Written Comments

Interested parties may submit written comments by Tuesday, October 14, 2008, to Robin Delany-Shabazz, Designated Federal Official, OJJDP, at Robin.Delany-Shabazz@usdoj.gov or by fax to 202-354-4063. [Note: These are not toll-free numbers.] No oral presentations will be permitted, however, written questions and comments from attending members of the public may be invited.

Dated: September 30, 2008.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E8-23531 Filed 10-3-08; 8:45 am]

BILLING CODE 4410-18-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission’s (NRC’s) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee’s reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public

to be considered as part of the Committee’s information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC’s Atomic Safety and Licensing Board Panel as part of the Commission’s licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Officer (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO 5 days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made 5 days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O-1F21, 11555 Rockville Pike, Rockville, MD 20852-2738. A copy of the certified minutes of the meeting will be available at the same location 3 months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the PDR at *pdr@nrc.gov*, by calling the PDR at 1-800-394-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/*

reading-rm/adams.html or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS Mtg schedules/agendas).

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Specialist, (301-415-8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities,

reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least 5 working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Meeting Dates for Calendar Year 2009

The ACRS meeting dates for Calendar Year 2009 are provided below:

Meeting number	Dates	Days
(No Meeting)	January 2009	(No Meeting).
559	February 5-7, 2009	Thursday-Saturday.
560	March 5-7, 2009	Thursday-Saturday.
561	April 2-4, 2009	Thursday-Saturday.
562	May 7-9, 2009	Thursday-Saturday.
563	June 3-5, 2009	Wednesday-Friday.
564	July 8-10, 2009	Wednesday-Friday.
(No Meeting)	August 2009	(No Meeting).
565	September 10-12, 2009	Thursday-Saturday.
566	October 8-10, 2009	Thursday-Saturday.
567	November 5-7, 2009	Thursday-Saturday.
568	December 3-5, 2009	Thursday-Saturday.

Dated: September 30, 2008.
Annette L. Vietti-Cook,
Secretary of the Commission.
 [FR Doc. E8-23539 Filed 10-3-08; 8:45 am]
 BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Issuance and Availability of Draft Regulatory Guide, DG-5026, and Cancellation of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Rescheduling of Public Meeting Associated with Notice of Issuance and Availability of Draft Regulatory Guide (DG) 5026.

FOR FURTHER INFORMATION CONTACT: Valerie Barnes, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

0001, telephone: (301) 415-5944 or e-mail to Valerie.Barnes@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The public meeting announced in 73 FR 56618 on September 29, 2008, has been cancelled and will be rescheduled for a later date. The public should go to the U.S. Nuclear Regulatory Commission's (NRC's) NRC's Web site at <http://www.nrc.gov/public-involve.html> and watch for an announcement of the rescheduled public meeting.

Also in 73 FR 56618, the NRC noticed the issuance and availability of DG-5026, "Fatigue Management for Nuclear Power Plant Personnel," for public comment. This regulatory guide provides a method that the staff of the NRC considers acceptable for complying with the Commission's regulations for managing personnel fatigue at nuclear power plants.

The regulations established by the NRC in Title 10, Part 26, of the *Code of Federal Regulations* (10 CFR Part 26), "Fitness for Duty Programs," establish requirements for ensuring that personnel are fit to safely and competently perform their duties. Subpart I, "Managing Fatigue," of 10 CFR Part 26 establishes requirements for managing personnel fatigue at nuclear power plants. The regulations in Subpart I provide a comprehensive and integrated approach to fatigue management, taking into account the multiple causes and effects of worker fatigue. The Commission recognizes that the potential for excessive fatigue is not solely based on extensive work hours, but also on other causal factors, such as stressful working conditions, sleep disorders, accumulation of sleep debt and the disruptions of circadian rhythms associated with shift work. These considerations are reflected in the requirements of the rule in order to ensure that licensees effectively manage worker fatigue and provide reasonable assurance that workers are able to safely and competently perform their duties.

II. Further Information

The NRC staff is soliciting comments on DG-5026. Comments may be accompanied by relevant information or supporting data, and should mention DG-5026 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

2. *E-mail to:* nrcprep.resource@nrc.gov

3. *Hand-deliver to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415-5144.

Requests for technical information about DG-5026 may be directed to Valerie Barnes at (301) 415-5944 or e-mail to Valerie Barnes.

Comments would be most helpful if received by October 31, 2008.

Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-5026 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML081960515.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to pdr.resource@nrc.gov.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 30th day of September 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,
Chief, Regulatory Guide Development Branch,
Division of Engineering, Office of Nuclear
Regulatory Research.

[FR Doc. E8-23514 Filed 10-3-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on US-APWR; Notice of Meeting

The ACRS Subcommittee on the US-APWR will hold a meeting on October 23-24, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to Mitsubishi Heavy Industries, Ltd., and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, October 23, 2008—8 a.m.—5 p.m.

Friday, October 24, 2008—8 a.m.—12 noon.

The Subcommittee will review five topical reports and a draft Safety Evaluation Report associated with the US-APWR Design Certification Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Mitsubishi Heavy Industries, Ltd., and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Neil Coleman, (Telephone: 301-415-7656) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 29, 2008.

Girija Shukla,
Acting Chief, Reactor Safety Branch B,
Advisory Committee on Reactor Safeguards.

[FR Doc. E8-23537 Filed 10-3-08; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION**[Release No. IC-28426; 812-13392]****H&Q Healthcare Investors, et al.; Notice of Application**

September 30, 2008.

AGENCY: Securities and Exchange Commission ("Commission").**ACTION:** Notice of application for an order under rule 17d-1 under the Investment Company Act of 1940 ("Act") to permit certain joint transactions.

APPLICANTS: H&Q Healthcare Investors ("HQH"); H&Q Life Sciences Investors ("HQL"); Hambrecht & Quist Capital Management LLC on behalf of itself and its successors ("HQCM"); Promere Fund LP ("Promere Fund"); Promere Performance LLC ("Promere General Partner"); Promere Capital Management LLC on behalf of itself and its successors ("Promere Manager"); Ardance Fund LP ("Ardance Fund"); Ardance Performance LLC ("Ardance General Partner"); and Ardance Capital Management LLC on behalf of itself and its successors ("Ardance Manager").¹

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered investment companies to coinvest with certain affiliated entities.²

FILING DATES: The application was filed on May 30, 2007, and amended on July 25, 2008 and September 30, 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 27, 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.

¹ The term "successor," as applied to HQCM, Promere Manager, and Ardance Manager, means an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants: c/o Hambrecht & Quist Capital Management LLC, 2 Liberty Square, Ninth Floor, Boston, MA 02109, Attention: Daniel R. Omstead, PhD.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, 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 (tel. 202-551-5850).

Applicants' Representations

1. HQCM, a limited liability company organized under the laws of Delaware, is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Promere Manager, a limited liability company organized under the laws of Delaware, is an investment adviser exempt from registration under the Advisers Act. Ardance Manager, a limited liability company organized under the laws of Delaware, is an investment adviser exempt from registration under the Advisers Act.

2. HQH, a Massachusetts business trust, is registered under the Act as a diversified closed-end management investment company. HQH's investment objective is long-term capital appreciation through investment in companies in the health care industry. HQCM serves as HQH's investment adviser and manages its day-to-day operations.

3. HQL, a Massachusetts business trust, is registered under the Act as a diversified closed-end management investment company. HQL's investment objective is long-term capital appreciation through investment in companies involved in scientific advances in life sciences (including biotechnology, pharmaceutical, diagnostics, managed health care and medical equipment, hospitals, health care information technology and services, devices and supplies), agriculture and environmental management fields. HQCM acts as HQL's investment adviser and manages the day-to-day operations of HQL. From time to time, HQCM or an entity controlling, controlled by or under common control with HQCM

(collectively, with HQCM, the "Adviser") may serve as investment adviser or sub-adviser to other registered closed-end management investment companies (together with HQH and HQL, the "Registered Funds") that will engage in investment activities similar to those engaged in by HQH and HQL.

4. Promere Manager will make investment decisions for Promere Fund, a Delaware limited partnership, that intends to qualify for an exclusion from the definition of an investment company under section 3(c)(7) of the Act. Promere General Partner, a Delaware limited liability company, that is under common control with Promere Manager, is the general partner of Promere Fund and will manage the business and affairs of Promere Fund. Promere Fund will seek long-term capital appreciation by investing primarily in privately held companies in the health care and life sciences industries.

5. Ardance Manager will make investment decisions for Ardance Fund, a Delaware limited partnership, that intends to qualify for the exclusion from the definition of an investment company under section 3(c)(1) of the Act. Ardance General Partner, a Delaware limited liability company, that is under common control with Ardance Manager, is the general partner of Ardance Fund and will manage the business and affairs of Ardance Fund. Ardance Fund will seek absolute returns on an annual basis while managing risk in both rising and falling markets. Ardance Fund's strategy for achieving this objective is to invest primarily in a portfolio of long and short equity positions focused on publicly traded companies in the health care industry. Although Ardance Fund will invest primarily in publicly traded securities and derivatives (e.g., for hedging and speculative purposes), it is possible that Ardance Fund may coinvest with HQH, HQL and/or Promere Fund in private placement securities. From time to time, the Adviser, Promere Manager or Ardance Manager may manage other accounts that are not registered investment companies in reliance on sections 3(c)(1) or 3(c)(7) of the Act (such accounts, together with Promere Fund and Ardance Fund, the "Unregistered Funds").

6. Applicants seek an order under rule 17d-1 under the Act to the extent necessary to permit HQH, HQL, and each other Registered Fund that is advised by an Adviser and the Unregistered Funds to coinvest in private placement transactions in which the Adviser, Promere Manager and/or

Ardance Manager negotiate terms in addition to price (“private placement securities”), make follow-on investments in the issuers of private placement securities (“Follow-On Investments”), and exercise warrants, conversion privileges, and other rights associated with such private placement securities (collectively, the “Co-investment Transactions”). The total available capital (“Total Available Capital”) of each Registered Fund and Unregistered Fund is the amount of total assets of each such fund available for investment in private placement securities, subject to applicable regulatory restrictions and the fund’s fundamental investment restrictions and policies. The Board of Trustees (“Board”) of each Trust has set a limit on the amount of initial investment of each Trust in securities of an issuer in private placement transactions (the “Investment Limit”), as described in the application.

Applicants’ Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 under the Act provides that in passing upon applications under section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company’s participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3) of the Act, in relevant part, defines an “affiliated person” of another person as (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; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person and (d) any officer, director, partner, copartner, or employee of the other person. As described more fully in the application, each of the Unregistered Funds, Promere General Partner, Ardance General Partner and any Adviser might be deemed to be an

affiliated person or a second-tier affiliated person of each Registered Fund within the meaning of Section 2(a)(3) of the Act, and the Registered Funds might be deemed to be affiliated persons within the meaning of Section 2(a)(3) of the Act. In some circumstances, these affiliations might prohibit each Registered Fund from participating in Co-investment Transactions pursuant to Section 17(d) and Rule 17d-1.

3. Applicants state that the ability to participate in Co-investment Transactions will benefit the Registered Funds and their shareholders by increasing the favorable investment opportunities available to them. Applicants represent that the Registered Funds will be able to (i) have a larger pool of capital available for investment, thereby obtaining access to a greater number and variety of potential investments than any Registered Fund could obtain on its own, and (ii) increase their bargaining power to negotiate more favorable terms.

4. Applicants believe that the terms and conditions contained in the application ensure that the Co-investment Transactions are consistent with the protection of each Registered Fund’s investors and with the purposes intended by the policy and provisions of the Act. Specifically, all participants will invest at the same time for the same price and with the same terms, conditions, class, registration rights, and any other rights, so that no participant receives terms more favorable than any other participant. In addition, the decision to participate in a Co-investment Transaction must be approved by a Required Majority (as defined below) of the Board of each participating Registered Fund to ensure that the terms of the Co-investment Transaction are fair and reasonable, do not involve overreaching, and are consistent with the investment objectives and policies of the Registered Fund. Co-investment Transactions will be reviewed by a duly appointed committee of the Board (the “Joint Transaction Committee”) that shall consist solely of members of the Board who are not “interested persons” within the meaning of section 2(a)(19) of the Act (the “Independent Trustees”) and shall have as its members at least a majority of all of the Independent Trustees.

Applicants’ Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each time that an Unregistered Fund or a Registered Fund proposes to

acquire private placement securities, the acquisition of which would be consistent with the investment objectives and policies of one or more Registered Funds, the Adviser will offer to each such Registered Fund the opportunity to acquire a *pro rata* amount (based upon amounts available for investment by each such Registered Fund and each participating Unregistered Fund) of the private placement securities, up to the entire amount being offered to it. If one Registered Fund declines the offer or accepts a portion of the private placement securities offered to it, but one or more other Registered Funds accepts the private placement securities offered, that portion of the private placement securities declined by the Registered Fund may be allocated to the other Registered Funds and Unregistered Funds based on their amounts available for investment. However, if the *pro rata* allocation to any Registered Fund exceeds its Investment Limit, then the portion of the allocation that exceeds the Investment Limit may be allocated *pro rata* to each other Registered Fund (up to its Investment Limit) and each participating Unregistered Fund. In each case in which an amount of private placement securities remains available after allocating the private placement securities to the Registered Funds as described above, the remainder may be allocated to the participating Unregistered Funds. For purposes of these conditions, the phrase “amounts available for investment” is the Total Available Capital of the Registered Fund or Unregistered Fund.

2. (a) With respect to each Co-investment Transaction, for each Registered Fund, the Adviser will make a separate determination whether the acquisition of the private placement security is appropriate and consistent with the investment objectives and policies of the Registered Fund and, if so, the appropriate amount that the Registered Fund should invest.

(b) After making the determination required in (a) above, the Adviser will submit written information concerning the Co-investment Transaction, including the amount proposed to be acquired by the Registered Fund, any other Registered Funds, and each Unregistered Fund to the Joint Transactions Committee. A Registered Fund’s Joint Transactions Committee shall consist solely of Independent Trustees and shall have as its members at least a majority of all of the Independent Trustees of such Registered Fund. The Adviser will provide information concerning the Total

Available Capital of the Registered Funds and the Unregistered Funds in order to assist the Joint Transactions Committee with its review of the Registered Fund's investments for compliance with the allocation features set forth in condition 1 above.

(c) A Registered Fund may participate in a Co-investment Transaction only if the Required Majority (as defined below) determines that:

i. The terms of the Co-investment Transaction, including the consideration to be paid, are reasonable and fair to the Registered Fund and its shareholders and do not involve overreaching of the Registered Fund or its shareholders on the part of any person concerned;

ii. The proposed Co-investment Transaction is consistent with the Registered Fund's investment objectives and policies as recited in its Form N-2 registration statement and its reports to shareholders; and

iii. The participation by another Registered Fund or the Unregistered Fund(s) in the proposed Co-investment Transaction would not disadvantage the Registered Fund, and participation by the Registered Fund would not be on a basis different from or less advantageous than that of any other Registered Fund or Unregistered Fund; provided, that if any Unregistered Fund, but not the Registered Funds, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if

(A) The Required Majority has the right to ratify the selection of such director or board observer, if any; and

(B) The Adviser:

(1) Provides to the Joint Transactions Committee material information received by any such person who then serves as a director or participates as a board observer or exercises any similar right to participate in the governance of a portfolio company; and

(2) Agrees to provide periodic reports to the Joint Transactions Committee with respect to the material actions of such director or the material information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

iv. The proposed investment by the Registered Fund will not benefit the Adviser, any other Registered Fund, any

Unregistered Fund, or any affiliated person thereof, except to the extent permitted under section 17(e) of the Act.

(d) A Required Majority is the number of a Registered Fund's Joint Transactions Committee members equal to at least a majority of all of the Independent Trustees of such Registered Fund. Each member of a Required Majority shall have no direct or indirect financial interest in the proposed Co-investment Transaction.

3. A Registered Fund has the right to decline to participate in any Co-investment Transaction or to invest less than the amount proposed. If the Adviser determines that a Registered Fund should not participate in a Co-investment Transaction offered to it pursuant to condition 1 above, the Adviser will submit its determination to the Joint Transactions Committee for approval by a Required Majority.

4. Each Registered Fund shall participate in a Co-investment Transaction only if the terms, conditions, price, class of securities being purchased, settlement date, registration rights, if any, and other rights are the same for each Registered Fund and any Unregistered Fund participating in the Co-investment Transaction. When more than one Registered Fund proposes to invest in a Co-investment Transaction, the Joint Transactions Committee of each Registered Fund shall review the Co-investment Transaction and a Required Majority will make the determinations in condition 2 above, on or about the same time. The grant to any Unregistered Fund, but not the Registered Fund(s), of the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company shall not cause a failure of this condition, if conditions 2(c)(iii)(A) and (B) are satisfied.

5. Except as described below, no Registered Fund may make a Follow-On Investment or exercise warrants, conversion privileges, or other rights unless such Registered Fund and each other Registered Fund and Unregistered Fund that participated in the original Co-investment Transaction make such Follow-On Investment or exercise such warrants, conversion rights, or other rights at the same time and in amounts proportionate to their respective holdings of the private placement securities acquired in such Co-investment Transaction. If a Registered Fund participates in a Follow-On Investment or exercises warrants, conversion privileges, or other rights

and the amounts to be invested or the warrants, conversion privileges or other rights to be exercised by each Registered Fund and Unregistered Fund are disproportionate to their respective holdings, the Adviser will formulate a recommendation as to the proposed Follow-On Investment or exercise of warrants, conversion privileges or other rights by each Registered Fund and Unregistered Fund and submit the recommendation to each Registered Fund's Joint Transactions Committee, including an explanation of such disproportionate investments or exercise of rights. Prior to any such disproportionate Follow-On Investment or exercise of rights, a Registered Fund must obtain approval by a Required Majority for the transaction as set forth in condition 2 above. Transactions pursuant to this condition 5 will be subject to the other conditions set forth in the application.

6. Except for transactions covered by condition 5 above, no Unregistered Fund or Registered Fund will sell, exchange, or otherwise dispose of any interest in any private placement securities acquired pursuant to the order, unless each Registered Fund has the opportunity to dispose of its interest at the same time, for the same unit consideration, on the same terms and conditions, as such Unregistered Fund or other Registered Fund and in a proportionate amount (based upon their relative holdings of the private placement securities). With respect to any such transaction, the Adviser will formulate a recommendation as to the proposed participation by a Registered Fund and submit the recommendation to such Registered Fund's Joint Transactions Committee. The Registered Fund will dispose of such private placement securities to the extent the Joint Transactions Committee, upon the affirmative vote of a Required Majority, determines that the disposition is in the best interest of the Registered Fund, is fair and reasonable, and does not involve overreaching of the Registered Fund or its shareholders by any person concerned.

7. The expenses, if any, associated with acquiring, holding, or disposing of any private placement securities (including, without limitation, the expenses of the distribution of any private placement securities registered for sale under the Securities Act of 1933), to the extent not payable solely by the Adviser, Promer Manager and Ardance Manager, as applicable, under their respective investment management agreements with the Registered Fund or Unregistered Fund, shall be shared by the Registered Funds and the

Unregistered Funds in proportion to the relative amounts of such private placement securities held or being acquired or disposed of, as the case may be, by the Registered Funds and the Unregistered Funds.

8. Each quarter the Adviser will provide to each Registered Fund's Joint Transactions Committee information concerning all investments in private placement securities made by all Registered and Unregistered Funds, including all investments in which the Registered Fund declined to participate, so that a Required Majority may determine whether all investments made during the preceding quarter, including those in which the Registered Fund declined to participate, comply with the conditions of the order. In addition, all of the Independent Trustees of each Registered Fund will consider at least annually the continued appropriateness of Co-investment Transactions by the Registered Fund with the Unregistered Funds and other Registered Funds, including whether engaging in Co-investment Transactions pursuant to the order continues to be in the best interests of the Registered Fund and its shareholders and does not involve overreaching on the part of any person concerned.

9. No investment will be made by a Registered Fund in a Co-investment Transaction in reliance on the order if the Adviser knows or reasonably should know that an Unregistered Fund or another Registered Fund or any affiliated person of such Unregistered Fund or another Registered Fund then currently holds a security issued by that issuer, except for a Follow-On Investment made pursuant to condition 5 of this order.

10. Any transaction fee (including break-up or commitment fees but excluding brokerage fees contemplated by section 17(e)(2) of the Act) received in connection with a transaction entered into in reliance on the order will be distributed to the participants on a *pro rata* basis based on the amounts they invested or committed, as the case may be, in such transaction. If any transaction fee is to be held by the Adviser, Promere General Partner, Promere Manager, Ardance General Partner or Ardance Manager pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser, Promere General Partner, Promere Manager, Ardance General Partner or Ardance Manager at a bank or banks having the qualifications prescribed in section 26(a) of the Act, and the account will earn a competitive rate of interest that also will be divided *pro rata* among the

participants based on the amounts they invested or committed, as the case may be, in such transaction. None of the Adviser, Promere General Partner, Promere Manager, Ardance General Partner, or Ardance Manager will receive additional compensation or remuneration of any kind as a result of or in connection with a co-investment or compensation for its services in sponsoring, structuring, or providing managerial assistance to an issuer of private placement securities that is not shared *pro rata* with the coinvesting Registered Funds and Unregistered Funds.

11. Each applicant will maintain and preserve all records required to be preserved under the Act and the rules and regulations under the Act applicable to such applicant. The Registered Funds will maintain the records required by section 57(f)(3) of the Act as if each of the Registered Funds were a business development company and the Co-investment Transactions were approved under section 57(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-23491 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28427; 812-13428]

MCG Capital Corporation, et al.; Notice of Application

September 30, 2008.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a), 55(a), and 61(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to permit: (1) A business development company to look to the assets of its wholly-owned subsidiaries, rather than the business development company's interest in the subsidiaries themselves, in determining whether the business development company meets certain requirements for business development companies under the Act, and (2) the business development company to adhere to a modified asset coverage requirement.

APPLICANTS: MCG Capital Corporation ("MCG"), Solutions Capital G.P., LLC, Solutions Capital I, L.P., MCG Capital Advisory Services, Inc., MCG Equity Funding I, LLC, MCG Finance I, LLC, MCG Finance V, LLC, MCG Commercial Loan Funding Trust, MCG Finance VII, LLC, MCG Commercial Loan Trust 2006-1, MCG Finance VIII, LLC, MCG Commercial Loan Trust 2006-2, MCG Finance IX, LLC, MCG Commercial Loan Trust 2008-1, MCG IH Holdings, Inc., IH Helicon, Inc., IH NPS Holdings, LLC, MCG Opportunity Investment Fund I, LLC, Sleep Investors, LLC, TNR Investors, LLC, Crystal Media Network, Inc., IH Chesapeake Tower, Inc., IH Dayton Parts, Inc., IH GSD, Inc., IH Intran Inc., IH MTP, Inc., IH NDS, Inc., IH NEPG, Inc., IH NYL, Inc., IH Orbitel Holdings, Inc., IH OTM, Inc., IH PBI, Inc., IH Premier, Inc. and IH Quantum, Inc.

FILING DATES: The application was filed on September 25, 2007, and amended on June 17, 2008, and September 17, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is contained 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 27, 2008, and should be accompanied by proof of service on the Applicant, 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. Applicant, c/o Steven F. Tunney, President and Chief Executive Officer, MCG Capital Corporation, 1100 Wilson Boulevard, Suite 3000, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT:

Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Marilyn Mann, Branch Chief, 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 (tel. 202-551-5850).

Applicants' Representations

1. MCG, a Delaware corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. MCG is a commercial finance company that provides capital and advisory services to middle-market companies throughout the United States.

2. MCG conducts, and expects to continue to conduct, a portion of its business through its current and future subsidiaries, all of whose equity securities are owned or will be owned directly or indirectly by MCG (each, a "Subsidiary"). There are three types of Subsidiaries that currently are active or are currently being contemplated: (1) Operating Subsidiaries, (2) financing subsidiaries, and (3) blocker subsidiaries.

3. MCG's current operating subsidiaries are Solutions Capital I, L.P. (the "SBIC Subsidiary") and Solutions Capital G.P., LLC (the "SBIC GP"). The SBIC Subsidiary, a Delaware limited partnership, is a small business investment company ("SBIC") licensed under the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). The SBIC Subsidiary relies on section 3(c)(7) of the Act. The SBIC GP, a Delaware limited liability company, is the sole general partner of the SBIC Subsidiary. MCG is the SBIC GP's sole member and owner. The SBIC GP is the sole general partner of the SBIC Subsidiary, and MCG is the sole limited partner of the SBIC Subsidiary.

4. MCG intends to operate the SBIC Subsidiary through the SBIC GP for the same investment purposes as MCG, and the SBIC Subsidiary will invest in the same kinds of securities as MCG. The operations of both the SBIC Subsidiary and the SBIC GP will be consolidated with those of MCG for financial reporting purposes. The assets of the SBIC Subsidiary and the SBIC GP are recorded on MCG's balance sheet, and thus are considered assets of MCG for U.S. generally accepted accounting principles purposes.

5. From time to time, MCG transfers pools of loans and/or other investments to special purpose entities (the "Financing Subsidiaries") for use in connection with on-balance sheet financing transactions. The current

Financing Subsidiaries are structured as Delaware limited liability companies. Each such current Financing Subsidiary, in turn, transfers such loans and/or other investments to a wholly owned trust (each, a "Financing Trust") that finances the acquisition of such assets through the issuance of debt securities. The current Financing Subsidiaries are excluded from the definition of investment company under section 3(c)(7) of the Act, and the current Financing Trusts are excluded from the definition of investment company under rule 3a-7 under the Act.

6. The purpose of the Financing Subsidiaries is to provide a legally separate entity to hold investments and/or to hold the Financing Trust, which, in turn, hold the investments supporting MCG's financings. MCG solely controls the operations of each Financing Trust, including the acquisition and disposition of assets by each Financing Trust.

7. MCG utilizes wholly owned subsidiaries to hold MCG's interests in certain of MCG's portfolio companies (the "Blocker Subsidiaries"). The Blocker Subsidiaries are excluded from the definition of investment company under section 3(c)(7) of the Act. Certain of the Blocker Subsidiaries are structured as Delaware corporations and hold certain investment assets that are structured as pass-through tax entities in order to allow MCG to continue to qualify as a regulated investment company for tax purposes.¹ Other Blocker Subsidiaries, organized as Delaware limited liability companies, hold MCG's interests in MCG's portfolio companies in order to block potential investor-related liability to MCG.

8. The Blocker Subsidiaries are not operating companies and do not have any employees. The Blocker Subsidiaries exist solely for the benefit of MCG in order to hold MCG's interests in its portfolio companies and do not provide any services to any other company. MCG does and will continue to make available significant managerial assistance to the issuers of securities held by the Subsidiaries to the extent required by section 2(a)(48)(B).²

¹ Applicants represent that these Blocker Subsidiaries are a lawful method of tax planning under the Internal Revenue Code and are frequently used by companies seeking to elect to be treated as regulated investment companies. MCG has obtained an opinion from tax counsel from the firm of Sutherland Asbill & Brennan LLP confirming the appropriateness of this structure.

² For the purposes of Section 2(a)(48)(B), MCG will treat securities held by the Subsidiaries as if they were held directly by MCG.

Applicants' Legal Analysis

A. Relief for MCG To Deem Assets Held by its Subsidiaries To Be Owned by MCG for Purposes of Determining Its Compliance With Section 55(a) of the Act

1. Section 2(a)(48) of the Act generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70 percent of its assets invested in assets described in sections 55(a)(1) through (7) ("Qualifying Assets"). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) generally excludes from the definition of an eligible portfolio company an investment company, as defined under section 3 of the Act, and a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

2. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to the extent that, 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. Applicants request an order pursuant to section 6(c) to allow MCG to deem the assets of its current and future Subsidiaries as its own assets for purposes of determining its compliance with section 55(a).

3. Applicants state that each Subsidiary will be formed as a limited liability company ("LLC"), a corporation ("Corporation") or a partnership ("Partnership"). MCG and/or one or more other Subsidiaries at all times will be the only members of each Subsidiary that is an LLC and will collectively hold all of the ownership interests in the LLC Subsidiary. No LLC Subsidiary will admit any person other than MCG or another Subsidiary as a member, and no LLC Subsidiary will issue interests other than to MCG or another Subsidiary. MCG and/or one or more other Subsidiaries at all times will own and hold all of the outstanding equity interests in each Subsidiary that is formed as a Corporation. MCG and/or one or more other Subsidiaries will at all times be the sole limited partner of any Subsidiary that is formed as a

Partnership and the sole owner of such Subsidiary's general partner. Applicants also state that since MCG, directly or indirectly through another Subsidiary, owns or would own the entire equity interest in any current and future Subsidiaries, any activity carried on by them will, in all material respects, have the same economic effect on MCG's stockholders as if carried on directly by MCG.

B. Relief for the Company To Adhere to a Modified Asset Coverage Requirement

1. Applicants request an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit MCG to adhere to a modified asset coverage requirement.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that a question exists as to whether MCG must comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) solely on an individual basis or whether MCG must also comply with the asset coverage requirements on a consolidated basis because MCG may be deemed to be an indirect issuer of any class of senior security issued by the SBIC Subsidiary. Applicants state that they wish to treat the SBIC Subsidiary as if it were a BDC subject to sections 18 and 61 of the Act. Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that 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. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, since the SBIC Subsidiary would be entitled to rely on section

18(k) if it was a BDC itself, there is no policy reason to deny the benefit of that exemption to MCG.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

Relief From Section 55(a)

1. Each Subsidiary will be formed as a limited liability company ("LLC"), a corporation ("Corporation") or a partnership ("Partnership"). MCG and/or one or more other Subsidiaries at all times will be the only members of each Subsidiary that is an LLC and will collectively hold all of the ownership interests in the LLC Subsidiary. No LLC Subsidiary will admit any person other than MCG or another Subsidiary as a member, and no LLC Subsidiary will issue interests other than to MCG or another Subsidiary. MCG and/or one or more other Subsidiaries at all times will own and hold all of the outstanding equity interests in each Subsidiary that is formed as a Corporation. MCG and/or one or more other Subsidiaries will at all times be the sole limited partner of any Subsidiary that is formed as a Partnership and the sole owner of such Subsidiary's general partner.

2. The Subsidiaries, and any future Subsidiaries, may not acquire any asset if the acquisition would cause MCG to violate section 55(a).

3. No person shall serve or act as investment adviser to a Subsidiary unless the Board and stockholders of MCG shall have taken the action with respect thereto also required to be taken by the board of directors of the Subsidiary and stockholders of the Subsidiary as if the Subsidiary were a BDC.

Relief From Section 18(a)

4. MCG will not issue or sell any senior security and MCG will not cause or permit the SBIC Subsidiary to issue or sell any senior security of which MCG or the SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61); provided that immediately after issuance or sale by any of MCG or the SBIC Subsidiary of any such senior security, MCG individually and on a consolidated basis, shall have the asset coverage required by section 18(a) (as modified by section 61(a)), except that, in determining whether MCG on a consolidated basis has the asset coverage required by section 18(a) (as modified by section 61(a)), any senior securities representing indebtedness of the SBIC Subsidiary shall not be considered senior securities and, for

purposes of the definition of "asset coverage" in section 18(h), will be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23492 Filed 10-3-08; 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 Wednesday, October 1, 2008, at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(8) and (9) and 17 CFR 200.402(a)(8) and (9), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, October 1, 2008, will be: Matters Related to the Financial Markets.

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: October 1, 2008.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8-23498 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [73 FR 55571, September 25, 2008].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, September 29, 2008 at 2 p.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Closed Meeting scheduled for Monday, September 29, 2008 was cancelled.

For further information please contact the Office of the Secretary at (202) 551-5400.

Dated: October 1, 2008,

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23579 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58685; File No. SR-ISE-2008-73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Trading Hours of the ISE Stock Exchange

September 30, 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 24, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) 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 Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ 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 submits this rule filing to extend its hours of trading for equity securities. The text of the proposed rule change is available on the Exchange’s Web site <http://www.ise.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 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 extend its hours of trading for equity securities. Currently, the Exchange has two equity trading sessions. The Pre-Market Session begins at 9 a.m. Eastern Time⁵ and ends when the opening transaction occurs, as defined in ISE Rule 2106(b). The Regular Market Session commences upon the opening transaction, as defined in ISE Rule 2106(b), and concludes simultaneously with the primary listing market in such security, which is either 4 p.m. or 4:15 p.m. Eastern Time, depending on the security.⁶

The Exchange is proposing to begin ISE Stock Exchange trading at 8 a.m. Eastern Time and close the market at 5 p.m. Eastern Time. Trading in the Pre-Market Session and the transition to the Regular-Market Session⁷ will remain unchanged, other than starting the Pre-Market Session one hour earlier.

Additionally, the Exchange is proposing to adopt a Post-Market Session, which will begin at the conclusion of the Regular-Market Session and close at 5 p.m. Eastern Time. To participate in the Post-Market session, Equity Electronic Access Members (“Equity EAMs”) must mark orders as “Post-Closing.” Accordingly, the Exchange is proposing to amend ISE Rule 2102 (Hours of Business) to provide for a Post-Market Session and

ISE Rule 2104 (Types of Orders) to adopt a “Post-Closing” order.

Trading during expanded hours involves potential risks, including the possibility of lower liquidity, higher volatility, changing prices, unlinked markets with the possibility of trade-throughs, and wider spreads. Moreover, trades executed during these sessions may receive executions at inferior prices when compared to the high/low of the day. The Supplementary Material to ISE Rule 2102 presently requires Equity EAMs that submit orders during the Pre-Market Session on behalf of non-members to disclose the risks of participating in such session to their customers. The Exchange proposes to expand this customer disclosure requirement to also apply to the Post-Market Session.

The Exchange proposes to adopt rule text governing trading halts in the Pre- and Post-Market Sessions. Specifically, if a security begins trading on the Exchange in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (“IIV”) or the value of the underlying index by a major market data vendor, the Exchange may continue to trade the derivative securities product for the remainder of the Pre-Market Session.

The Exchange will continue to halt trading during the Regular-Market Session in accordance with the provisions set forth in existing ISE Rule 2101(a)(2)(iii)(A) and (B).⁸

The Exchange will halt trading during the Post-Market Session if the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Regular-Market Session. The Exchange may trade derivative securities products in the Post-Market Session only if the listing market traded such securities until the close of its regular trading session without a halt.

If the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Pre-Market Session on the next business day, the Exchange will not begin trading the derivative securities product in the Pre-Market Session that day. If an interruption in the calculation or wide

⁵ See Securities and Exchange Commission Release No. 34-57021 (December 20, 2007), 72 FR 74373 (December 31, 2007) (SR-ISE-2007-116) (Notice of filing and immediate effectiveness of proposed rule change to open the Exchange’s equity trading platform at 9:00 a.m.).

⁶ See ISE Rule 2106.

⁷ See *supra* note 5.

⁸ The Exchange is also amending ISE Rule 2101(a)(2)(iii)(A) to delete language addressing the halting and subsequent resumption of trading when the underlying value of a securities derivative product continues not to be calculated or widely available as of the commencement of trading on the next business day. The Exchange believes that it is appropriate to delete this language because it is being added to proposed Rule 2102(e)(3).

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).

dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the derivative securities product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the derivative securities product resumes in the listing market.

The Exchange intends to distribute to its Equity EAMs and make available on its Web site at <http://www.ise.com> a Regulatory Information Circular ("RIC") that discloses, among other things: (1) The current underlying index value and IIV may not be updated during the Pre- and Post-Market Sessions; (2) lower liquidity in the Pre- and Post-Market Sessions may impact pricing; (3) higher volatility in the Pre- and Post-Market Sessions may impact pricing; (4) wider spreads may occur in the Pre- and Post-Market Session; (5) the circumstances that trigger trading halts; (6) required customer disclosures; and (7) suitability requirements. The RIC will also highlight that investors may be at a disadvantage to market professionals during the Pre- and Post-Market Sessions in that they may not have access to an updated index value or IIV that would otherwise be available during the Regular Market Session. The Exchange is also amending the Supplementary Material to Rule 2102 to require Equity EAMs to disclose additional risks associated with extended trading hours in Exchange Traded Funds to customers.

Additionally the Exchange is proposing to amend Rule 2102(b) to precisely define the transition between the Pre-Market Session and the Regular-Market Session as is described above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's¹⁰ requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to provide a competitive marketplace for Equity

EAMs to trade securities during extended hours.

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

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

ISE 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 allowing ISE, without undue delay, to expand its hours of trading, which should add competition in the trading of equity securities and new derivative securities products. In addition, proposed ISE Rule 2102 is closely modeled after similar rules of other national securities exchanges¹³ and does not raise any novel or significant regulatory issues. Therefore, the Commission designates the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). The Commission notes that ISE has satisfied the five-day pre-filing notice requirement.

¹³ See e.g., NYSE Arca Rule 7.34 and Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77) (reflecting trading halt procedures for securities trading in extended hours). See also Securities Exchange Act Release No. 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR-NYSEArca-2007-73) (discussing disclosure to be included in regulatory information bulletin).

proposed rule change as operative upon filing.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 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-ISE-2008-73 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-2008-73. 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;

¹⁴ 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).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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-2008-73 and should be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23489 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58691; File No. SR-Phlx-2008-69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to the Phlx XL Risk Monitor Mechanism

September 30, 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 18, 2008, the NASDAQ OMX PHLX, Inc. (“Phlx” 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 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 Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange Rule 1093, Phlx XL Risk Monitor Mechanism, to reflect a system change to its fully electronic trading platform for options, Phlx XL.⁵ The system change would eliminate the current size offset of long calls vs. long puts and short calls vs. short puts in the accounts of Exchange Streaming Quote Traders (“SQTs”),⁶ Remote Streaming

Quote Traders (“RSQTs”),⁷ non-SQT ROTs,⁸ and specialists (collectively, “Phlx XL participants”) when the Phlx XL system determines whether to engage the Risk Monitor Mechanism (as defined more fully below) by calculating the Net Offset Specified Engagement Size (as defined below).

The text of the proposed rule change is available on the Exchange’s Web site at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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 provide Phlx XL participants with additional protection from the unreasonable risk associated with the execution of an excessive number of contracts resulting from near simultaneous executions in a single option issue.

Risk Monitor Mechanism

In January, 2006, the Exchange adopted Rule 1093 and deployed the Phlx XL Risk Monitor Mechanism.⁹ The Phlx XL Risk Monitor Mechanism is a component of Phlx XL that counts the

generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁷ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁸ A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Exchange Rule 1014(b)(ii)(C).

⁹ See Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR-Phlx-2006-05).

number of contracts traded in a particular option by each Phlx XL participant within a specified time period established by each Phlx XL participant (the “specified time period”). The specified time period commences for an option when a transaction occurs in any series in such option. The specified time period may not exceed 15 seconds; Phlx XL participants may, however, set the specified time period for less than 15 seconds.

The system engages the Risk Monitor Mechanism in a particular option when the counting program has determined that a Phlx XL participant has traded a Specified Engagement Size (as defined below), as established by such Phlx XL participant, during the specified time period. When such Phlx XL participant has traded the Specified Engagement Size during the specified time period, the Risk Monitor Mechanism automatically removes such Phlx XL participant’s quotations from the Exchange’s disseminated quotation in all series of the particular option until such Phlx XL participant submits a new, revised quotation.

Specified Engagement Size

Each Phlx XL participant establishes a Specified Engagement Size for a particular option.¹⁰ When such Phlx XL participant has traded the Specified Engagement Size during the specified time period, the Risk Monitor Mechanism automatically removes such Phlx XL participant’s quotations from the Exchange’s disseminated quotation in all series of the particular option.

The Specified Engagement Size is determined as follows: For each series in an option, the counting program would determine the percentage that the number of contracts executed in that series represents relative to the disseminated size in that series (the “series percentage”). The counting program would then determine the sum of the series percentages in the

¹⁰ A Phlx XL participant could establish the Specified Engagement Size as 100% or greater of the number of contracts executed in each series during the specified time period relative to the disseminated size. For example, a Phlx XL participant could establish the Specified Engagement Size as 200%, in which case the Risk Monitor Mechanism would not be engaged until 200% of the number of contracts in each series have been executed during the specified time period relative to the disseminated size. A Phlx XL participant could also establish the Specified Engagement Size as, for example, 120%, in which case the Risk Monitor Mechanism would not be engaged until 120% of the number of contracts in each series have been executed during the specified time period relative to the disseminated size. In any event, however, a Phlx XL participant may not establish a Specified Engagement Size that is less than 100%.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR-Phlx-2003-59) [sic].

⁶ An SQT is a Registered Options Trader (“ROT”) who has received permission from the Exchange to

underlying option issue (the “issue percentage”). Once the counting program determines that the issue percentage equals or exceeds a percentage established by the Phlx XL participant which may not be less than 100% (the “Specified Percentage”), the number of executed contracts in the option issue equals the Specified Engagement Size.

Offset on the Opposite Side of the Market

Currently, the Risk Monitor Mechanism calculates the number of contracts executed on one side of the market during the specified time period, and offsets that number of contracts by

the number of contracts executed on the opposite side of the market during the specified time period. The purpose of this provision is to account for the offset in risk of one option position created by a position in the same option issue on the opposite side of the market. Because the risk in such a situation is generally neutral, the Exchange believes that Phlx XL participants should continue executing contracts until the actual risk that is created by the Specified Engagement Size is realized. The Specified Engagement Size is thus automatically offset by a number of contracts that are executed on the opposite side of the market in the same

option issue during the specified time period (the “Net Offset Specified Engagement Size”).

Currently, the Risk Monitor Mechanism is engaged when the Net Offset Specified Engagement Size is for a number of contracts executed among all series during the specified time period that represents an issue percentage that is equal to or greater than the specified percentage. For example, currently a Phlx XL participant that buys calls and also sells calls or buys puts in the same option during the specified time period would have a Net Offset Specified Engagement Size as follows:

Series	Size	Buy call	Sell call/buy put	Net offset size	Percentage
Series 1	100	60	20	40	40
Series 2	50	100	80	20	40
Series 3	200	150	130	20	10
Series 4	150	75	60	15	10
Total	500	385	290	95	100

In this example, 675 contracts have been executed during the specified time period (buy calls 385 + sell calls/buy puts 290). The Net Offset Specified Engagement Size for each series is determined by offsetting the number of contracts executed on the opposite side of the market for each series during the specified time period. The Risk Monitor Mechanism is engaged once the Net Offset Specified Engagement Size is executed for a net number of contracts among all series during the specified time period that represents an issue percentage that is equal to or greater than the specified percentage.

Proposed Amendment to Net Offset Specified Engagement Size

As stated above, the Specified Engagement Size is automatically offset by the Net Offset Specified Engagement Size. Currently, for example, a Phlx XL participant that buys calls and also sells calls or buys puts in the same option during the specified time period has a net Offset Specified Engagement Size that takes into account all opposite sides of the Phlx XL participants, including offset sizes respecting long call vs. long put positions, and short call vs. short put positions.

Long call and long put (and short call and short put) offsets ignore volatility risk associated with options. Since the inception and deployment on the Exchange of the Risk Monitor Mechanism, Phlx XL participants have experienced situations where the long call/long put offset and the short call/

short put offset have unintentionally placed them at undue risk respecting market volatility.¹¹

Specifically, any long option position, whether a put or call, involves a positive volatility. Conversely, any short option position, whether a put or call, involves a negative volatility. Therefore, a Phlx XL participant's account that includes a long call position and a long put position in the same option will have a total positive volatility among the two positions. The two positions, when combined, do not offset one another respecting volatility. Instead, the two positions, when combined, result in the aggregate positive volatility of the two positions.

Similarly, any short option position, whether a put or call, involves a negative volatility.

Therefore, a Phlx XL participant's account that includes a short call position and a short put position in the same option will have a total negative volatility among the two positions. The two positions, when combined, do not offset one another respecting volatility.

¹¹ While the sensitivity of an options price relative to change in the price of the underlying security is measured in “delta”, the sensitivity of an options price relative to change in the volatility of the underlying security is measured in “vega”. A relatively high vega in an options series means that the option has a relatively large extrinsic value (i.e., time premium of the option), thus affording more likelihood for the option premium price to deviate significantly, and a relatively low volatility means that the option has a relatively small extrinsic value, thus affording a smaller likelihood that the option price can change.

Instead, the two positions, when combined, result in the aggregate negative volatility of the two positions.

Initially, the Exchange intended to offset opposite side positions when determining the Net Offset Specified Engagement Size because the delta (i.e., price change of the overlying option as a percentage of the price change in the underlying security) risk of each respective position was offset by the other. The Exchange did not, however, consider the aggregate volatility created by a long call/long put or short call/short put position. This combination results in a total aggregate volatility, and such volatility is not offset by the respective positions in the aggregate.

Accordingly, the Exchange proposes to eliminate the call/put offset provision from the Risk Monitor Mechanism and from the text of Rule 1093 in order to eliminate the undue volatility risk currently imposed on Phlx XL participants in this circumstance. The proposed rule change provides that long call positions will only be offset by short call positions (and vice versa), and long put positions will only be offset by short put positions. Eliminating the call/put offset provides greater protection for Phlx XL participants who seek to minimize their risk exposure when utilizing the Risk Monitor Mechanism. The Exchange believes that this protection should result in larger sized bids and offers made by Phlx XL participants, thus adding liquidity to the Exchange's markets while protecting

Phlx XL participants from exposure to undue volatility risk respecting options positions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ 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 Phlx XL participants with additional protection from exposure to undue market risk through the Risk Monitor Mechanism.

The Exchange further believes that the proposed rule change is consistent with the Act because the risk protection afforded Phlx XL participants by way of elimination of the long put/call and short put/call offsets should encourage them to quote options series with greater size, adding liquidity to the Exchange's markets against which customers can trade.

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

Because the proposed rule change effects a change in an existing order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(5) of Rule 19b-4 thereunder.¹⁵

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 the 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-Phlx-2008-69 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-2008-69. 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 Phlx. 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-2008-69 and should

be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23490 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58684; File No. SR-NASDAQ-2008-075]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading the Two-Character Ticker Symbol "TO"

September 30, 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") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(5) thereunder,⁴ which renders it 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

Nasdaq proposes to trade the common stock of Tech/Ops Sevcon, Inc. on Nasdaq using the two-character symbol "TO."

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

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

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)(5).

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

Historically, securities listed on Nasdaq have traded using four or five character symbols.⁵ In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one, two or three character symbols beginning on January 31, 2007.⁶ This announcement was designed to provide market participants and vendors the time needed to make required changes to their own systems that may be affected by the change. Since February 20, 2007, Nasdaq has had the ability to accept and distribute Nasdaq-listed securities with one, two or three character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that "[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues,"⁷ and on March 22, 2007, Delta Financial Corporation transferred to Nasdaq from the American Stock Exchange and maintained its three-character symbol, DFC.⁸ Subsequently, the Commission approved a rule change to permit any company to transfer from another exchange to Nasdaq and maintain its three-character symbols.⁹ On April 28, 2008, CA, Inc. transferred to Nasdaq from the New York Stock Exchange and maintained its two-character symbol,

⁵ This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

⁶ See Head Trader Alert 2005-133 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2005-133> and Vendor Alert 2005-070 (November 14, 2005), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2005-070>. See also Head Trader Alert 2006-144 (September 29, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-144>, Head Trader Alert 2006-193 (November 16, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-193> and Vendor Alert 2006-065 (October 4, 2006), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2006-065>.

⁷ Head Trader Alert 2007-050 (March 1, 2007), available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2007-050>.

⁸ See Securities Exchange Act Release No. 55519 (March 26, 2007) 72 FR 15737 (April 2, 2007) (SR-NASDAQ-2007-025).

⁹ See Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (approving SR-NASDAQ-2007-031). Over 30 companies with three-character symbols have listed on Nasdaq.

CA, and on June 2, 2008, Hawaiian Holdings, Inc. transferred to Nasdaq from the American Stock Exchange and maintained its two-character symbol, HA.¹⁰ Nasdaq states that there have been no trading problems reported to Nasdaq as a result of listing securities on Nasdaq with two-character or three-character symbols.

Nasdaq now proposes to allow Tech/Ops Sevcon, Inc., which currently trades on another domestic market with the two-character symbol TO, to transfer its common stock to Nasdaq and continue using that two-character symbol. Nasdaq believes that allowing this company to maintain its symbol will reduce investor confusion and promote competition among exchanges. Specifically, allowing Tech/Ops Sevcon to maintain its trading symbol will reduce investor confusion associated with its transfer to Nasdaq because investors will continue to be able to obtain quotations and execute trades using the same familiar symbol and will allow the issuer to maintain a symbol that has become a part of its identity to investors.¹¹ Further, Nasdaq believes that permitting Tech/Ops Sevcon to maintain its symbol will enhance competition among exchanges by removing concerns about investor confusion surrounding its symbol from the factors a company must consider when choosing where to list its equities. This proposal is also consistent with the historical practice of allowing companies to maintain their symbols when they switch among national securities exchanges.¹²

Given the foregoing, Nasdaq believes that market participants were provided adequate notice of this change and are prepared to accommodate the trading of this company on Nasdaq using the symbol TO. Further, Nasdaq believes that any change to the symbol will cause confusion among investors and market participants. As such, Nasdaq proposes to begin trading the common stock of

¹⁰ See Securities Exchange Act Release Nos. 57696 (April 22, 2008), 73 FR 22987 (April 28, 2008) (SR-NASDAQ-2008-034 relating to CA) and 57875 (May 27, 2008), 73 FR 31524 (June 2, 2008) (SR-NASDAQ-2008-047 relating to HA).

¹¹ A market transfer will still be transparent to investors because, under the Commission's rules, a company must announce the transfer of its listing on a Form 8-K. See Form 8-K, item 3.01(d). In addition, the issuer must publish notice of its intent to withdraw a class of securities from listing and/or registration, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, on that Web site. See Rule 12d2-2(c)(2)(iii) under the Act, 17 CFR 240.12d2-2(c)(2)(iii).

¹² See, e.g., Darwin Professional Underwriters, Inc (from NYSE Arca to NYSE keeping the symbol DR), Chile Fund, Inc. (from NYSE to Amex keeping the symbol CH), and iShares NYSE 100 (from NYSE to NYSE Arca keeping the symbol NY).

Tech/Ops Sevcon, Inc. on Nasdaq using the symbol TO on October 1, 2008. While this filing relates to the transfer of this issuer, Nasdaq remains committed to working with the Commission and other markets to establish an equitable and transparent symbol assignment plan.¹³

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general and with Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. As described above, the proposed rule change will reduce investor confusion and encourage competition between national securities exchanges.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(5) thereunder¹⁷ in that it effects a change to an order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon filing with the Commission.

At any time within 60 days of the filing of a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

¹³ See Securities Exchange Act Release No. 56037 (July 10, 2007) 72 FR 39096 (July 17, 2007).

¹⁴ 15 U.S.C. 78(a).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(5).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-075 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-2008-075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-075 and should be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23488 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58680; File No. SR-NYSE-2008-76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Rule 2B To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

September 29, 2008.

I. Introduction

On August 20, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Rule 2B to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C. ("Arca Securities"), an NYSE affiliated member. On September 4, 2008, the proposed rule change was published for comment in the **Federal Register**.³ The Commission received no comments on the proposed rule change. On September 25, 2008, NYSE filed Amendment No. 1.⁴ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background

A. NYSE Arca's PO Plus Proposal

On August 20, 2008, NYSE Arca, Inc. ("NYSE Arca") filed with the Commission a proposed rule change to

expand the availability of its PO Order type ("PO Plus Proposal").⁵ NYSE Arca's PO Order is a market or limit order that is to be routed to the primary market in that security without first attempting to access liquidity on the NYSE Arca book. The PO Orders are routed to the primary market through NYSE Arca's routing broker-dealer, Arca Securities, which is an affiliate of NYSE Arca as described more fully below. The "primary market" may be the New York Stock Exchange LLC ("NYSE") or the American Stock Exchange LLC ("Amex"),⁶ each of which, as described more fully below, also is (or will be) an affiliate of NYSE Arca and Arca Securities.

Such orders, currently, may only be entered until a cut-off time established from time to time by the Exchange.⁷ In its PO Plus Proposal, NYSE Arca

⁵ See Securities Exchange Act Release No. 58431 (August 27, 2008), 73 FR 51681 (September 4, 2008). The Commission today is approving NYSE Arca's proposed rule change. See Securities Exchange Act Release No. 58681 (September 29, 2008) (SR-NYSEArca-2008-90) ("PO Plus Approval Order").

On February 13, 2008, NYSE Arca filed a proposal to modify its PO Order pursuant to 19(b)(3)(A), making it effective upon filing with the Commission. See Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008) (SR-NYSEArca-2008-19). The Commission abrogated the proposal on April 11, 2008, noting that it has, in the past, expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtues of informational or operational advantages, or the ability to receive preferential treatment. See Securities Exchange Act Release No. 57648 (April 11, 2008), 73 FR 20981 (April 17, 2008) at note 9 and accompanying text. The Commission noted that NYSE Arca's filing raised this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE, and therefore should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 10 and accompanying text. Further, the Commission stated that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to notice and comment pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 11 and accompanying text.

⁶ Amex will change its name to NYSE Alternext US in connection with the acquisition of Amex by NYSE Euronext. See Securities Exchange Act Release No. 58673 (September 29, 2008) (order approving a proposed rule change related to the acquisition of the Amex by NYSE Euronext) (SR-Amex-2008-62; SR-NYSE-2008-60) ("NYSE Alternext US Order"). The transaction is expected to close shortly.

⁷ See NYSE Arca Equities Rule 7.31(x). Currently, a PO Order entered for participation in the primary market opening must be entered before 6:28 a.m. (Pacific Time), and a PO Order entered for participation in the primary market re-opening after a trading halt must be entered after trading was halted on NYSE Arca and before the re-opening time. See *id.*

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58430 (August 27, 2008), 73 FR 51678 ("Notice").

⁴ In Amendment No. 1, NYSE requested that the Commission accelerate approval of the proposed rule change. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

proposes to modify the PO Order type so that such orders may be entered at any time throughout the trading day and be immediately routed to the primary, listing market for execution.⁸ Further, the proposal permits an entering party to designate a PO Order as an Intermarket Sweep Order (as defined in Rule 600(b) of Regulation NMS under the Act).⁹ The expanded PO order is referred to as a PO Plus order.¹⁰

B. Arca Securities Routing Function

NYSE Euronext, a Delaware Corporation (“NYSE Euronext”) currently indirectly owns Arca Securities, a broker-dealer that is a member of the NYSE. In addition, NYSE Euronext indirectly owns two registered securities exchanges—NYSE Arca and NYSE—and has entered into an agreement to acquire a third exchange, Amex.¹¹ Thus, Arca Securities is (or will be) an affiliate of each of these exchanges.

NYSE Rule 2B prohibits NYSE, or any entity with which it is affiliated, from acquiring or maintaining an ownership interest in a member, absent prior Commission approval. Thus, Arca Securities’ affiliation with NYSE would violate NYSE rules, absent Commission approval.

The Commission has approved Arca Securities’ affiliation with, and operation as a facility of, NYSE Arca for the provision of outbound routing from NYSE Arca to other market centers,¹² subject to certain conditions.¹³ Arca

Securities also operates as a facility of NYSE and similarly provides outbound routing from NYSE to other market centers,¹⁴ subject to the conditions that: (1) Arca Securities is operated and regulated as a facility of the NYSE; (2) the primary regulatory responsibility for Arca Securities lies with an unaffiliated SRO; and (3) the use of Arca Securities’ for outbound routing is available only to NYSE members and the use of Arca Securities’ routing functions remains optional.¹⁵

Currently, the operation of Arca Securities as a facility of NYSE and NYSE Arca providing outbound routing services from those exchanges is subject, respectively, to NYSE and NYSE Arca oversight, as well as Commission oversight. NYSE and NYSE Arca are each responsible for ensuring that Arca Securities is operated consistent with Section 6 of the Act and their respective rules. In addition, NYSE and NYSE Arca, respectively, must file with the Commission rule changes and fees relating to Arca Securities.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, NYSE proposes to accept inbound orders that its affiliate Arca Securities routes in its capacity as a facility of NYSE Arca, subject to the following limitations and conditions:

- First, NYSE states that NYSE and FINRA have entered into an agreement pursuant to Rule 17d-2 under the Act. Pursuant to this agreement, FINRA is allocated regulatory responsibilities to review Arca Securities’ compliance with certain NYSE rules.¹⁶ NYSE, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

- Second, NYSE Regulation¹⁷ will monitor Arca Securities for compliance

Securities only provide outbound routing services; (3) the primary regulatory responsibility for Arca Securities would lie with an unaffiliated SRO; and (4) the use of Arca Securities for outbound routing is available only to NYSE Arca members and use of Arca Securities routing functions remains optional. *Id.*

¹⁴ See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (SR-NYSE-2007-29) (order filed for immediate effectiveness to, among other things, establish a mechanism to route orders from NYSE to away market centers). See also Notice, *supra* note 3, at notes 14 to 16 and accompanying text.

¹⁵ *Id.*

¹⁶ NYSE also states that Arca Securities is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. See Notice, *supra* note 3, at section II.A.1.c.

¹⁷ NYSE Regulation is a wholly owned subsidiary of the NYSE that performs the regulatory functions of the NYSE pursuant to a delegation agreement.

with NYSE’s trading rules, and will collect and maintain certain related information.¹⁸

- Third, NYSE states that NYSE Regulation has agreed with NYSE that it will provide a report to NYSE’s CRO, on a quarterly basis, that: (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE or Commission rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE or Commission rules.¹⁹

- Fourth, NYSE proposes an amendment to Rule 2B that will require NYSE Euronext, as the holding company owning both NYSE and Arca Securities, to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the NYSE systems as a result of its affiliation with NYSE, until such information is available generally to similarly situated members of NYSE, in connection with the provision of inbound order routing to NYSE.²⁰

- Fifth, NYSE proposes that routing of PO Plus Orders from Arca Securities to NYSE, in Arca Securities’ capacity as a facility of NYSE Arca, be authorized for a pilot period of twelve months.²¹

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the

NYSE Regulation also performs many of the regulatory functions of NYSE Arca pursuant to a regulatory services agreement. See Securities Exchange Act Release Nos. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings) (“NYSE/Arca Order”) at 11255.

¹⁸ Specifically, NYSE Regulation “will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE Arca, routing orders to NYSE) is identified as a participant that has potentially violated NYSE or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC’s Office of Compliance Inspections and Examination.” See Notice, *supra* note 3, at section II.A.1.c.

¹⁹ See *id.*

²⁰ See proposed NYSE Rule 2B.

²¹ See Notice, *supra* note 3, at section II.A.1.(e).

²² In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ A PO Order would have to be a day or immediate-or-cancel (“IOC”) order. If the PO Order is not an IOC order it would remain at the venue to which it was routed, until executed, cancelled, or the end of day. Further, under the proposal, PO Orders entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening, must be marked with the modifier PO+. Such orders would be eligible for entry and execution throughout the trading day.

⁹ 17 CFR 240.600(b). In addition, in its filing NYSE Arca proposes that: (1) The use of certain non-public information by Arca Securities be restricted; (2) NYSE Regulation, Inc. (“NYSE Regulation”) would collect and maintain certain information with respect to Arca Securities; and (3) routing by Arca Securities in its capacity as a facility of NYSE, to NYSE Arca, be authorized for a pilot period of 12 months.

¹⁰ See PO Plus Approval Order, *supra* note 5.

¹¹ See NYSE Alternext US Order, *supra* note 6.

¹² Such outbound routing includes the routing of PO Orders to the primary market.

¹³ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR-PCX-2005-90) (order approving a proposed rule change in connection with the acquisition of the Pacific Exchange, Inc. (“PCX”, n/k/a NYSE Arca) by Archipelago Holdings, Inc.). Arca Securities’ operation as a facility providing outbound routing for NYSE Arca was (and continues to be) subject to the conditions that: (1) Arca Securities continue to operate and be regulated as a facility of NYSE Arca; (2) Arca

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.²⁴ The proposed expansion of NYSE Arca's PO Order type, which the Commission approved today,²⁵ will expand the activities of Arca Securities in routing orders to the NYSE. Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to NYSE, subject to the conditions described above.²⁶

NYSE has proposed five conditions applicable to Arca Securities routing

activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,²⁷ combined with NYSE Regulation's monitoring of Arca Securities' compliance with NYSE's trading rules and quarterly reporting to NYSE's CRO, will help to protect the independence of NYSE's regulatory responsibilities with respect to Arca Securities. The Commission also believes that the proposed amendment to NYSE Rule 2B²⁸ is designed to ensure that Arca Securities cannot use any information advantage it may have because of its affiliation with NYSE. Furthermore, the Commission believes that NYSE's proposal to allow Arca Securities to route PO Plus orders inbound to NYSE from NYSE Arca, on a pilot basis, will provide NYSE and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of NYSE to route orders inbound to NYSE and whether such affiliation provides an unfair competitive advantage.

IV. Accelerated Approval

NYSE has asked the Commission to accelerate approval of the proposed rule change. NYSE notes that the proposed rule change reflects the Exchange's efforts to address concerns identified by the Commission regarding informational advantages favoring Arca Securities and states in part that "accelerated approval * * * will permit the Exchange to immediately address this issue."²⁹ The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**.³⁰ The Commission notes that the protections proposed by NYSE, which are designed to address conflict of interest concerns identified by the Commission in connection with the inbound routing of orders to an exchange when the routing broker-dealer is an affiliate of that exchange, are consistent with those approved by the Commission in another rule filing.³¹ The Commission also notes that the

proposed rule change was published for the full 21-day comment period,³² and the comment period ended on September 25, 2008. No comments were received on the proposal.

Accordingly, the Commission finds good cause for approving the proposed rule change on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change (SR-NYSE-2008-76), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58681; File No. SR-NYSEArca-2008-90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Arca Equities Rule 7.31(x) to Change the Permissible Order Entry Time and Eligibility of Its Primary Only Order and Amending NYSE Arca Equities Rule 14.3 to Establish Procedures Designed to Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

September 29, 2008.

I. Introduction

On August 20, 2008, NYSE Arca, Inc., ("NYSE Arca" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to (i) amend NYSE Arca Equities Rule 7.31(x) to change the permissible order entry time and eligibility of its Primary Only Order type ("PO Order") and (ii) amend NYSE Arca Equities Rule 14.3 to establish procedures designed to manage

³² See *supra* note 3 and accompanying text.

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 15 U.S.C. 78f(b)(5).

²⁴ See, e.g., Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members), and NYSE/Arca Order, *supra* note 15.

²⁵ See PO Plus Approval Order, *supra* note 5.

²⁶ See *supra* notes 16-21 and accompanying text. See also PO Plus Approval Order, *supra* note 5 (approving the routing of orders by Arca Securities, in its capacity as a facility of NYSE, to NYSE Arca) and NYSE Alternext US Order, *supra* note 6 (including approval of NYSE Alternext US's affiliation with Arca Securities for purposes of routing orders, in its capacity as a facility of NYSE Arca and NYSE, to NYSE Alternext US).

This order approves only the routing of orders by Arca Securities, in its capacity as a facility of NYSE Arca, to NYSE, subject to the conditions discussed herein. This approval does not include Arca Securities providing routing of orders from Amex, which will be affiliated with NYSE Arca following Amex's acquisition by NYSE Euronext, to NYSE. Amex does not currently use Arca Securities to route orders to other markets and has not requested approval of such in its filing related to its acquisition by NYSE Euronext. See NYSE Alternext U.S. Order, *supra* note 6).

²⁷ This oversight will be accomplished through the 17d-2 agreement between FINRA and NYSE. See *supra* note 16 and accompanying text.

²⁸ See *supra* note 20 and accompanying text.

²⁹ See Amendment No. 1, *supra* note 4.

³⁰ 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of notice thereof, unless the Commission finds good cause for so doing.

³¹ See NYSE Alternext US Order, *supra* note 6, at section III.D.2.

potential information advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C. (“Arca Securities”). On September 4, 2008, the proposed rule change was published for comment in the **Federal Register**.³ The Commission received no comments on the proposed rule change. On September 25, 2008, NYSE Arca filed Amendment No. 1.⁴ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background

A. PO Plus Proposal

NYSE Arca proposes to expand the availability of its PO Order type. NYSE Arca’s PO Order is a market or limit order that is to be routed to the primary market in that security without first attempting to access liquidity on the NYSE Arca book. Such orders, currently, may only be entered until a cut-off time established from time to time by the Exchange.⁵ The orders are routed to the primary market through NYSE Arca’s routing broker-dealer, Arca Securities, which is an affiliate of NYSE

³ See Securities Exchange Act Release No. 58431 (August 27, 2008), 73 FR 51681 (“PO Plus Notice”).

On February 13, 2008, NYSE Arca filed a proposal to modify its PO Order pursuant to 19(b)(3)(A), making it effective upon filing with the Commission. See Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008) (SR–NYSEArca–2008–19). The Commission abrogated the proposal on April 11, 2008, noting that it has, in the past, expressed concern about the potential for unfair competition and conflicts of interest between an exchange’s self-regulatory obligations and its commercial interests if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtues of informational or operational advantages, or the ability to receive preferential treatment. See Securities Exchange Act Release No. 57648 (April 11, 2008), 73 FR 20981 (April 17, 2008) at note 9 and accompanying text. The Commission noted that NYSE Arca’s filing raised this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE, and therefore should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 10 and accompanying text. Further, the Commission stated that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act. See *id.* at note 11 and accompanying text.

⁴ In Amendment No. 1, NYSE Arca requested that the Commission accelerate approval of the proposed rule change. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

⁵ See NYSE Arca Equities Rule 7.31(x). Currently, a PO Order entered for participation in the primary market opening must be entered before 6:28 a.m. (Pacific Time), and a PO Order entered for participation in the primary market re-opening after a trading halt must be entered after trading was halted on NYSE Arca and before the re-opening time. See *id.*

Arca as described more fully below. The “primary market” may be the New York Stock Exchange LLC (“NYSE”) or the American Stock Exchange LLC (“Amex”),⁶ each of which, as described more fully below, also is (or will be) an affiliate of NYSE Arca and Arca Securities.

NYSE Arca proposes to modify the PO Order type so that such orders may be entered at any time throughout the trading day and be immediately routed to the primary, listing market for execution. A PO Order would have to be a day or immediate-or-cancel (“IOC”) order. If the PO Order is not an IOC order it would remain at the venue to which it was routed, until executed, cancelled, or the end of day. Further, under the proposal, PO Orders entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening, must be marked with the modifier PO+. Such orders would be eligible for entry and execution throughout the trading day. Finally, the proposal permits an entering party to designate a PO Order as an Intermarket Sweep Order (as defined in Rule 600(b) of Regulation NMS under the Act).⁷

In addition, NYSE Arca proposes that: (1) The use of certain non-public information by Arca Securities would be restricted; (2) NYSE Regulation, Inc. (“NYSE Regulation”) would collect and maintain certain information with respect to Arca Securities; and (3) routing by Arca Securities to NYSE Arca, in Arca Securities’s capacity as a facility of NYSE, be authorized for a pilot period of 12 months.

B. Arca Securities Routing Function

NYSE Euronext, a Delaware Corporation (“NYSE Euronext”) currently indirectly owns Arca Securities, a broker-dealer, that is a member of NYSE Arca. In addition, NYSE Euronext indirectly owns two registered securities exchanges—NYSE Arca and NYSE—and has entered into an agreement to acquire a third securities exchange—Amex.⁸ Thus, Arca Securities is (or will be) an affiliate of each of these exchanges.

NYSE Arca Equities Rule 3.10 prohibits: (1) An NYSE Arca member from being affiliated with NYSE Group,

⁶ Amex will change its name to NYSE Alternext US LLC in connection with the acquisition of Amex by NYSE Euronext. See Securities Exchange Act Release No. 58673 (September 29, 2008) (SR–Amex–2008–62; SR–NYSE–2008–60) (order approving a proposed rule change related to the acquisition of the Amex by NYSE Euronext) (“NYSE Alternext US Order”). The transaction is expected to close shortly.

⁷ 17 CFR 240.600(b).

⁸ See NYSE Alternext US Order, *supra* note 6.

Inc. (“NYSE Group”);⁹ and (2) NYSE Group, or any entity with which it is affiliated, from maintaining an ownership interest in a member. Thus, Arca Securities’s affiliation with NYSE Arca would violate NYSE Arca rules, absent Commission approval.

The Commission has approved Arca Securities affiliation with, and operation as a facility of, NYSE Arca for the provision of outbound routing from NYSE Arca to other market centers,¹⁰ subject to certain conditions.¹¹ Arca Securities’s operation as a facility providing outbound routing for NYSE Arca was (and continues to be) subject to the conditions that: (1) Arca Securities continue to operate and be regulated as a facility of NYSE Arca; (2) Arca Securities only provide outbound routing services; (3) the primary regulatory responsibility for Arca Securities would lie with an unaffiliated SRO; and (4) the use of Arca Securities for outbound routing is available only to NYSE Arca members and use of Arca Securities’s routing function remains optional.¹² Arca Securities also operates as a facility of NYSE and similarly provides outbound routing from NYSE to other market centers, subject to conditions similar to those listed above.¹³

Currently, the operation of Arca Securities as a facility of NYSE Arca and NYSE providing outbound routing services from those exchanges is subject, respectively, to NYSE Arca and NYSE oversight, as well as Commission oversight. NYSE Arca and NYSE are each responsible for ensuring that Arca Securities is operated consistent with Section 6 of the Act and their respective rules. In addition, NYSE Arca and NYSE, respectively, must file with the Commission rule changes and fees relating to Arca Securities.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, NYSE Arca proposes

⁹ NYSE is wholly owned by NYSE Group, which is in turn wholly owned by NYSE Euronext.

¹⁰ Such outbound routing includes the routing of PO Orders to the primary market.

¹¹ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90) (order approving proposed rule changes in connection with the acquisition of the Pacific Exchange, Inc. (“PCX,” n/k/a NYSE Arca) by Archipelago Holdings, Inc.).

¹² *Id.*

¹³ See PO Plus Notice, *supra* note 3, at notes 19–21 and accompanying text. See also Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (SR–NYSE–2007–29) (order filed for immediate effectiveness to among other things, establish a mechanism to route orders from NYSE to away market centers).

to accept inbound orders that its affiliate, Arca Securities, routes in its capacity as a facility of NYSE, subject to the following limitations and conditions:

- First, NYSE Arca states that FINRA and NYSE Arca have entered into an agreement pursuant to Rule 17d-2 under the Act. Pursuant to this agreement, FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain NYSE Arca rules.¹⁴ NYSE Arca, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

- Second, NYSE Regulation¹⁵ will monitor Arca Securities for compliance with NYSE Arca's trading rules, and will collect and maintain certain related information.¹⁶

- Third, NYSE Arca states that NYSE Regulation has agreed with NYSE Arca that it will provide a report to NYSE Arca's CRO, on a quarterly basis, that: (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Arca or Commission rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE Arca or Commission rules.¹⁷

- Fourth, NYSE Arca proposes new Rule 14.3(e) that will require NYSE Euronext, as the holding company owning both NYSE Arca and Arca Securities, to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the NYSE Arca systems as a result of its affiliation

with NYSE Arca, until such information is available generally to similarly situated members of NYSE Arca, in connection with the provision of inbound order routing to NYSE Arca.¹⁸

- Fifth, NYSE Arca proposes that routing from Arca Securities to NYSE Arca, in Arca Securities's capacity as a facility of NYSE, be authorized for a pilot period of twelve months.¹⁹

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.²² Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to

NYSE Arca, on a pilot basis, subject to the conditions described above.²³

NYSE Arca has proposed five conditions applicable to Arca Securities routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,²⁴ combined with NYSE Regulation's monitoring of Arca Securities' compliance with NYSE Arca's trading rules and quarterly reporting to NYSE Arca's CRO, will help to protect the independence of NYSE Arca's regulatory responsibilities with respect to Arca Securities. The Commission also believes that proposed NYSE Arca Equities Rule 14.3(e)²⁵ is designed to ensure that Arca Securities cannot use any information advantage it may have because of its affiliation with NYSE Arca. Furthermore, the Commission believes that NYSE Arca's proposal to allow Arca Securities to route orders inbound to NYSE Arca from NYSE, on a pilot basis, will provide NYSE Arca and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of NYSE Arca to route orders inbound to NYSE Arca and whether such affiliation provides an unfair competitive advantage.

The Commission also finds the expansion of the PO Order consistent with the Act. The expanded PO Order will provide NYSE Arca members greater choice in the handling of their orders, and their method of compliance with their obligations under Rule 611 of Regulation NMS.²⁶

²³ See *supra* notes 14–19 and accompanying text. See also Securities Exchange Act Release No. 58680 (September 29, 2008) (SR-NYSE-2008-76) (approving the expansion of the routing of order by Arca Securities, in its capacity as a facility of NYSE Arca, to NYSE) and NYSE Alternext US Order, *supra* note 6 (including approval of NYSE Alternext US's affiliation with Arca Securities for purposes of Arca Securities routing orders, in its capacity as a facility of NYSE Arca and NYSE, to NYSE Alternext US).

This order approves only the routing of orders by Arca Securities, in its capacity as a facility of the NYSE, to NYSE Arca, subject to the conditions discussed herein. This approval does not include Arca Securities providing routing of orders from Amex, which will be affiliated with NYSE Arca following Amex's acquisition by NYSE Euronext, to NYSE Arca. Amex does not currently use Arca Securities to route orders to other markets and has not requested approval of such in its filing related to its acquisition by NYSE Euronext. See NYSE Alternext US Order, *supra* note 6.

²⁴ This oversight will be accomplished through the 17d-2 agreement among FINRA and NYSE Arca. See *supra* note 14 and accompanying text.

²⁵ See *supra* note 18 and accompanying text.

²⁶ 17 CFR 240.611.

¹⁴ NYSE Arca also states that Arca Securities is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. See PO Plus Notice, *supra* note 3, at section II.A.1.c.

¹⁵ NYSE Regulation is a wholly owned subsidiary of the NYSE that performs the regulatory functions of the NYSE pursuant to a delegation agreement. NYSE Regulation also performs many of the regulatory functions of NYSE Arca pursuant to a regulatory services agreement. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) ("NYSE/Arca Order") at 11255.

¹⁶ Specifically, NYSE Regulation "will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE, routing orders to NYSE Arca) is identified as a participant that has potentially violated NYSE Arca or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination." See PO Plus Notice, *supra* note 3, at section II.A.1.c.

¹⁷ See *id.*

¹⁸ See proposed NYSE Arca Equities Rule 14.3(e).

¹⁹ See PO Plus Notice, *supra* note 3, at section II.A.1.(e).

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² See, e.g., Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members), and NYSE/Arca Order, *supra* note 15.

IV. Accelerated Approval

NYSE Arca has asked the Commission to accelerate approval of the proposed rule change. NYSE Arca states in part that "accelerated approval * * * will eliminate certain competitive disadvantages that exist by permitting the Exchange to immediately offer directed orders to its Users."²⁷ The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**.²⁸ The Commission notes that the protections proposed by NYSE Arca, which are designed to address conflict of interest concerns identified by the Commission in connection with the inbound routing of orders to an exchange when the routing broker-dealer is an affiliate of that exchange, are consistent with those approved by the Commission in another rule filing.²⁹ The Commission also notes that the proposed rule change was published for the full 21-day comment period,³⁰ and the comment period ended on September 25, 2008. No comments were received on the proposal.

Accordingly, the Commission finds good cause for approving the proposed rule change, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-NYSEArca-2008-90), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23487 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P

²⁷ See Amendment No. 1, *supra* note 4.

²⁸ 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of notice thereof, unless the Commission finds good cause for so doing.

²⁹ See NYSE Alternext US Order, *supra* note 6, at section III.D.2.

³⁰ See *supra* note 3 and accompanying text.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11409 and # 11410]

Florida Disaster Number FL-00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-1785-DR), dated 08/26/2008.

Incident: Tropical Storm Fay.
Incident Period: 08/18/2008 through 09/12/2008.

DATES: *Effective Date:* 09/24/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 08/26/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Alachua, Gadsden, Liberty, Martin.

Contiguous Counties (Economic Injury Loans Only):

Florida: Calhoun, Gilchrist, Gulf, Jackson.

Georgia: Decatur, Seminole.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-23426 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11411]

Florida Disaster Number FL-00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Florida (FEMA-1785-DR), dated 08/24/2008.

Incident: Tropical Storm Fay.
Incident Period: 08/18/2008 through 09/12/2008.

DATES: *Effective Date:* 09/24/2008.

Physical Loan Application Deadline Date: 10/23/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Lee.

All other counties contiguous to the above named primary county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-23428 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11449 and # 11450]

Indiana Disaster Number IN-00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA-1795-DR), dated 09/23/2008.

Incident: Severe Storms and Flooding.
Incident Period: 09/12/2008 and Continuing.

DATES: *Effective Date:* 09/26/2008.

Physical Loan Application Deadline Date: 11/24/2008.

EIDL Loan Application Deadline Date: 06/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Indiana, dated 09/23/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Harrison, Jefferson, Jennings.

Contiguous Counties (Economic Injury Loans Only):

Indiana: Bartholomew, Clark, Crawford, Decatur, Floyd, Jackson, Ripley, Scott, Switzerland, Washington.

Kentucky: Carroll, Hardin, Jefferson, Meade, Trimble.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. E8-23432 Filed 10-3-08; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION
[Disaster Declaration # 11264 and # 11265]

Iowa Disaster Number IA-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 14.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA-1763-DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 through 08/13/2008.

DATES: *Effective Date:* 09/25/2008.

Physical Loan Application Deadline Date: 10/31/2008.

EIDL Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Iowa, dated 05/27/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/31/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. E8-23462 Filed 10-3-08; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11451]

Mississippi Disaster # MS-00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA-1794-DR), dated 09/22/2008.

Incident: Hurricane Gustav.

Incident Period: 08/28/2008 through 09/08/2008.

DATES: *Effective Date:* 09/22/2008.

Physical Loan Application Deadline Date: 11/24/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/22/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/22/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Amite, Claiborne, Copiah, Forrest, Franklin, George, Hancock, Harrison, Jackson, Jefferson, Jefferson Davis, Lawrence, Lincoln,

Marion, Pearl River, Pike, Stone, Walthall, Wilkinson.
Contiguous Counties/Parishes (Economic Injury Loans Only):
Mississippi: Covington, Greene, Hinds, Jones, Lamar, Perry, Rankin, Simpson, Warren.
Alabama: Mobile, Washington.
Louisiana: Concordia, East Feliciana, St. Helena, St. Tammany, Tangipahoa, Tensas, Washington, West Feliciana.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The Number Assigned to this Disaster for Physical Damage and Economic Injury is 11451.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.
[FR Doc. E8-23430 Filed 10-3-08; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11458 and # 11459]

Mississippi Disaster # MS-00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-1794-DR), dated 09/26/2008.

Incident: Hurricane Gustav.

Incident Period: 08/28/2008 through 09/08/2008.

DATES: *Effective Date:* 09/26/2008.

Physical Loan Application Deadline Date: 11/25/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 09/26/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Hancock, Harrison, Washington.

Contiguous Counties/Parishes (Economic Injury Loans Only):
Mississippi: Bolivar, Humphreys, Issaquena, Jackson, Pearl River, Sharkey, Stone, Sunflower.

Arkansas: Chicot.
Louisiana: Saint Tammany.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 114588 and for economic injury is 114590.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. E8-23463 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11454 and #11455]

Pennsylvania Disaster #PA-00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 09/25/2008.

Incident: Apartment Building Fire.
Incident Period: 09/19/2008.

DATES: *Effective Date:* 09/25/2008.
Physical Loan Application Deadline Date: 11/24/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Montgomery.
Contiguous Counties:
Pennsylvania: Berks, Bucks, Chester, Delaware, Lehigh, Philadelphia.
The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11454 5 and for economic injury is 11455 0. The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

September 25, 2008.

Sandy K. Baruah,
Acting Administrator.
[FR Doc. E8-23464 Filed 10-3-08; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Region II Buffalo District Advisory Council. The meeting will be open to the public.

DATES: The meeting will be held on October 15, 2008 from approximately 9:30 a.m. to 11:30 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Buffalo Club, 388 Delaware Avenue, Buffalo, New York, 14202.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Region II Buffalo District Advisory Council. The Region II Buffalo District Advisory Council is tasked with providing information of public interest.

The purpose of the meeting is so the council can provide advice and opinions regarding the effectiveness of and need for SBA programs, particularly the local districts which members represent. The agenda will include: District office, SBA program, and disaster updates, lending activity reports, small business week, event announcements, and roundtable discussion on small business issues.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Region II Buffalo District Advisory Council must contact Franklin J. Sciortino, District Director, Buffalo District Office by October 10, by fax or e-mail in order to be placed on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551-4301 or fax (716) 551-4418.

Additionally, if you need accommodations because of a disability or require additional information, please contact Kelly Lotempio, BDS/PIO, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551-4301, kelly.lotempio@sba.gov or fax (716) 551-4418.

For more information, please visit our Web site at <http://www.sba.gov/ny/buffalo>.

Dated: September 29, 2008.

Cheryllyn Lebon,
SBA Committee Management Officer.
[FR Doc. E8-23460 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**Emergence Capital Partners SBIC, L.P., License No. 09/79-0454; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to InQ, Inc., 30501 Agoura Road, Suite 203, Agoura Hills, CA 91301.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., both Associates of Emergence Capital Partners SBIC, L.P., own in the aggregate more than ten percent of InQ, Inc. Therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 22, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8-23461 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section

312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Kidzui, Inc., 2448 Historic Decatur Road, Suite 105, San Diego, CA 92106.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own in the aggregate more than ten percent of Kidzui, Inc. Therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 22, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8-23465 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Invivodata, Inc., 2100 Wharton Street, Suite 505, Pittsburgh, PA 15203.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own in

the aggregate more than ten percent of Invivodata, Inc. Therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 23, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8-23466 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Bill.com, Inc., 3520 Ash Street, Palo Alto, CA 94306.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., both Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Bill.com, Inc., and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: September 8, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8-23468 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to PivotLink, Inc., 15325 SE 30th Place, Suite 300, Bellevue, WA 98007.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own in the aggregate more than ten percent of PivotLink, Inc. Therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

August 29, 2008.

A. Joseph Shepard,

Associate Administrator for Investment.

[FR Doc. E8-23469 Filed 10-3-08; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 6374]

Notice of Intent To Establish the Global AIDS Coordinator's Expert Panel on Prevention of Mother-to-Child Transmission of HIV

SUMMARY: Pursuant to section 309 of the United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, ("the Act"), Public Law 110-293, this is a notice of intent to establish the Global AIDS Coordinator's Expert Panel on Prevention of Mother-to-Child Transmission of HIV.

Purpose: The objectives and scope of activities of the Expert Panel are to provide an objective review of activities to prevent mother-to-child transmission of HIV (human immunodeficiency virus, the pathogen that causes Acquired Immune Deficiency Syndrome (AIDS)), and to provide a report and recommendations to the Global AIDS Coordinator and to the appropriate congressional committees for scale-up of prevention of Mother-to-Child transmission prevention services.

Membership: The Panel shall consist of not more than fifteen members appointed by the Global AIDS Coordinator. Members of the Panel shall be drawn from governmental and private sector organizations, in accordance with the requirements under section 309 of the Act. All meetings of this Panel will be announced ahead of time by notice published in the **Federal Register**.

Further information regarding this Panel may be obtained from Rebecca Hooper, Office of the Global AIDS Coordinator, U.S. Department of State, Washington, DC 20520, (202) 663-2440.

Dated: September 29, 2008.

Thomas Walsh,

Deputy U.S. Global AIDS Coordinator, Acting Department of State.

[FR Doc. E8-23564 Filed 10-3-08; 8:45 am]

BILLING CODE 4710-10-P

DEPARTMENT OF STATE

[Public Notice 6383]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for career Senior Executive Service members:

Alexander A. Arvizu, Deputy Assistant Secretary, Bureau of East

Asian and Pacific Affairs, Department of State; (Outside Member);

Linda Jacobson, Assistant Legal Adviser, Office of the Legal Adviser, Department of State;

Susan H. Swart, Chief Information Officer, Bureau of Information Resource Management, Department of State; (Outside Member);

Linda S. Tagliatalata, Deputy Assistant Secretary, Bureau of Human Resources, Department of State; and James E. Tyckoski, Office Director, Office of Resource Planning and Budget, Bureau of Resource Management, Department of State.

Dated: September 17, 2008.

Harry K. Thomas, Jr.,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. E8-23570 Filed 10-3-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT-OST-2008-0296]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the annual obligation of Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Caffein Gordon, Associate Director of Policy and Quality Control Division, S-35, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, 202 366-4648 or (TTY) 202-366-8538.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>. The FDMS is available 24 hours each day, 365 days each year. Electronic retrieval help and guidelines are available under the help section of the Web site. An electronic

copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

No Fear Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," Public Law 107-174, 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." In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." 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, whistleblower protection and retaliation 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 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 protections 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 who has engaged in discriminatory or retaliatory conduct, 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 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).

Issued in Washington, DC on September 29, 2008.

J. Michael Trujillo,

*Director, Departmental Office of Civil Rights,
United States Department of Transportation.*

[FR Doc. E8-23592 Filed 10-3-08; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at Nenana Airport, Nenana, AK

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately 15.61 acres of airport property at Nenana Airport, Nenana, Alaska, from all restrictions of the surplus property agreement since the parcel of land is not needed for airport purposes. Reuse of the land for Alaska Rail Road track straightening represents a compatible land use. Sale of the property to the Alaska Rail Road at the appraised fair market value will

be used to pay legal fees incurred during recent airport improvements. The property is not needed for airport purposes and reinvestment of the sale proceeds will benefit the airport and the interests of civil aviation.

DATES: November 5, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, **Federal Register** Comment, 222 West 7th Avenue #14, Anchorage, AK 99513. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Jason P. Maynard, Mayor/Administrator, Nenana Port Authority, City of Nenana, P.O. Box 70 Nenana, Alaska 99760.

FOR FURTHER INFORMATION CONTACT: Stephen W. Powell, Airports Compliance Officer, Federal Aviation Administration, Airports Division, 222 West 7th Avenue #14, Anchorage, AK 99513, telephone (907) 271-5448 and FAX (907) 271-2851. For airport-specific information regarding the release, contact Mr. Jason P. Maynard, Mayor/Administrator, at the above address or telephone (907) 832-5501.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10-181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds.

The following is a brief overview of the request:

The City of Nenana, Alaska requested a release from surplus property agreement obligations, described in a Quit Claim Deed executed by the General Services Administration (GSA), recorded in Book Volume III Page 210 Nenana Recording District for approximately 15.61 acres of airport land. The property is only a portion of the Surplus Property granted and located on the North boundary of the airport. The land is presently unused, unimproved, and does not generate any income. Due to its location, the property cannot be used for airport purposes nor has it generated revenue for the airport. The release will allow the land to be sold to the Alaska Rail Road Corporation, Alaska to realign a section of railroad track that passes through the community of Nenana, Alaska. The property will be sold at the appraised market value and the sale proceeds will be used to pay off legal fees incurred in the latest airport improvement and

development project. Reuse of the property to straighten tracks will be compatible with the airport and the reuse of the sale proceeds will benefit the airport, thereby serving the interests of civil aviation.

Issued in Anchorage, Alaska, on September 3, 2008.

James W. Lomen,

Deputy Division Manager, Airports Division, Alaska Region.

[FR Doc. E8-23563 Filed 10-3-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for certain steel products used in Federal-aid construction projects in Maine, California, and Oregon.

DATES: The effective date of the waiver is October 7, 2008.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, gerald.yakowenko@dot.gov. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, michael.harkins@dot.gov. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/Nara>.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when application of the requirements would be inconsistent with the public interest or when satisfactory quality domestic steel

and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for three specific cases.

In accordance with section 130 of Division K of the "Consolidated Appropriations Act, 2008" (Pub. L. 110-161), on July 24, 2008, the FHWA published on its Web site a notice of intent to issue a waiver for a Casing shoe for dual rotary drill rig in Maine (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=16>) and for Self-drill and Grout Dowels and Self-Drill Grout spiles in California (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=15>). In addition, on July 31, 2008, the FHWA published a notice of intent on its Web site to issue a waiver (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=17>) for 1" Hollow Core Anchors for a Federal-aid railroad project in Oregon. No comments were received in response to either of these notices. During the 15-day comment period, the FHWA conducted a nationwide review to locate potential domestic manufacturers. Based on all the information available to the Agency, including the lack of response received to the notices as well as the Agency's nationwide review, the FHWA concludes that there are no domestic manufacturers for these products and a Buy America waiver is appropriate as provided by 23 CFR 635.410(c)(1).

In accordance with the provisions of section 117 of the "SAFETEA-LU Technical Corrections Act of 2008" (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the links above to the Maine, California and Oregon waiver pages noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

Issued on: September 29, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

[FR Doc. E8-23571 Filed 10-3-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Buy America Waiver Notification**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for certain steel products used in Federal-aid construction projects in New York and Rhode Island.

DATES: The effective date of the waiver is October 7, 2008.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, gerald.yakowenko@dot.gov. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, michael.harkins@dot.gov. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for two specific cases.

In accordance with section 130 of Division K of the "Consolidated Appropriations Act, 2008" (Pub. L. 110-161), the FHWA published on its Web site a notice of intent to issue a waiver for Center Pivot Bearing Assembly in New York <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=14> on July 14, and stainless steel clad reinforcing bars (for experimental research) in Rhode Island

<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=18> on August 12. The FHWA received a comment in response to Center Pivot Bearing Assembly which suggested that the Center Pivot Bearing may be available domestically. Further investigation and inquiry revealed that the product is not available domestically. Some comments received in response to stainless steel clad rebars suggested that solid stainless rebar should be used, and that stainless clad rebar may be more expensive than solid stainless rebar. Other commenters disagreed with this position. The Rhode Island DOT's waiver request is to evaluate the stainless clad reinforcing bars under an experimental project. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for the products. Based on all the information available to the Agency including the responses received to the notices as well as the Agency's nationwide review, the FHWA concludes that there are no domestic manufacturers for these products and a Buy America waiver is appropriate as provided by 23 CFR 635.410(c)(1).

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat.1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the links above to the New York and Rhode Island waiver pages noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

Issued on: September 29, 2008.

Thomas J. Madison, Jr.

Federal Highway Administrator.

[FR Doc. E8-23574 Filed 10-3-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; CHRYSLER**

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Chrysler LLC, (Chrysler) petition for exemption of the Dodge Journey vehicle line in accordance with 49 CFR Part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

DATES: The exemption granted by this notice is effective beginning with the 2010 Model Year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION: In a petition dated July 15, 2008, Chrysler requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Dodge Journey vehicle line, beginning with MY 2010. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under Section § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per year. Chrysler has petitioned the agency to grant an exemption for its Dodge Journey vehicle line beginning with MY 2010. In its petition, Chrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Chrysler will install the Sentry Key Immobilizer System (SKIS) antitheft device as standard equipment on the vehicle line. The major components of the SKIS device consists of a powertrain control module, integrated power module, sentry key remote entry module (SKREEM), fob with integrated key (FOBIK) and an electromechanical instrument cluster which controls the telltale function only. All of these components work collectively to perform the immobilizer function.

Chrysler stated that the SKIS provides passive vehicle protection by preventing the engine from operating unless a valid electronically encoded key is detected in the ignition lock cylinder. The immobilizer feature is activated when

the key is removed from the ignition lock cylinder. Once activated, only a valid key inserted into the ignition lock cylinder will disable immobilization and allow the vehicle to start and continue to run.

The SKREEM/Wireless Ignition Node (WIN), an integral component of the SKIS anti-theft device contains a radio frequency transceiver and microprocessor that receives signals from the Sentry key transponder and communicates to the FOBIK. The SKREEM/WIN determines whether a valid key is present in the ignition switch based on the signal received from the transponder, and also serves as the receiver for the Tire Pressure Monitoring System if the vehicle is equipped with one. To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the response identifies the key as invalid, or if no response is received from the key transponder, the SKREEM sends an invalid key message to the Powertrain Control Module (PCM). The PCM will disable engine operation (after the initial 2-second run) based upon the status of the SKREEM messages. Chrysler stated that only six consecutive invalid vehicle start attempts would be permitted and all other attempts would be locked out by preventing the fuel injectors from firing and disabling the starter.

Chrysler stated that it has incorporated an unauthorized vehicle start telltale light into the device. The telltale feature operates as a security indicator in the ElectroMechanical Instrument Cluster (EMIC). The telltale alerts the owner that an unauthorized vehicle start attempt has been made. Upon an unauthorized start attempt, the telltale will flash on and off when the ignition switch is turned to the "ON" position. Besides acting as a security indicator, the telltale acts as a diagnostic indicator. If the SKREEM detects a system malfunction and/or the SKIS has become inoperative, the security indicator will stay on. If the SKREEM detects an invalid key or if a key transponder-related fault exists, the security indicator will flash.

Each ignition key used in the SKIS has an integral transponder chip included on the circuit board beneath the cover of the integral Remote Keyless Entry (RKE) transmitter. In addition to having to be cut to match the mechanical coding of the ignition lock cylinder and programmed for operation of the RKE system, each new Sentry Key has a unique transponder identification

code that is permanently programmed into it by the manufacturer, and which must be programmed into the SKREEM to be recognized by the SKIS as a valid key. Chrysler stated that once a Sentry Key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

Chrysler stated that the SKIS device does not provide any visible or audible indication of unauthorized entry but that the theft data has indicated a decline in theft rates for vehicle lines that have been equipped with anti-theft devices similar to that which it proposes to install on the Dodge Journey vehicle line. The agency has previously concluded that the lack of a visual or audible alarm has not prevented these anti-theft devices from being effective protection against theft.

In addressing the specific content requirements of 543.6, Chrysler provided information on the reliability and durability of the device. Chrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, Chrysler stated that its device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. In addition to the design and production validation test criteria, Chrysler stated that the SKIS also undergoes a daily short term durability test. Chrysler also stated that 100% of its systems undergo a series of three functional tests for durability prior to being shipped from the supplier to the vehicle assembly plant for installation in its vehicles.

Chrysler stated that while there is no theft data available for the Dodge Journey because it's a new vehicle line introduction, experience with the Chrysler Pacifica, a similar 5-door, front wheel drive/AWD crossover vehicle indicates that the Dodge Journey is projected to have a theft rate lower than the median theft rate. The average theft rate for the Chrysler Pacifica using 3 Model Years (MY's) data is 1.9677.

Chrysler also stated that experience with the Jeep Grand Cherokee, which was subject to the parts marking requirements and subsequently equipped with ignition immobilizer systems as standard equipment, indicate that even lower theft rates can be expected from a vehicle equipped with standard ignition immobilizer systems. Chrysler has offered the SKIS vehicle immobilizer system as standard equipment on all Jeep Grand Cherokee vehicles since MY 1999. Chrysler indicated that based on NHTSA's theft rate data, the average theft rate for Jeep Grand Cherokee vehicles (1995-1998)

before an immobilizer was offered as standard equipment on the Jeep Grand Cherokee vehicles was 5.3574, significantly above the median theft rate of 3.5826. However, the average theft rate for the six model years (1999-2005) after installation of the standard immobilizer device is 2.5492, significantly lower than the median. The Jeep Grand Cherokee vehicle line was granted an exemption from the parts-marking requirements beginning with MY 2004. Chrysler further stated that NHTSA's theft data for the Jeep Grand Cherokee indicates that the inclusion of a standard immobilizer system has resulted in a 52.3% net average reduction in vehicle thefts. On the basis of the previous comparisons, Chrysler has concluded that the proposed anti-theft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the information Chrysler has provided about its device, the agency concludes that the anti-theft device for the Dodge Journey vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Chrysler has provided adequate reasons for its belief that the anti-theft device will reduce and deter theft. This conclusion is based on the information Chrysler provided about its anti-theft device.

For the foregoing reasons, the agency hereby grants in full Chrysler's petition for an exemption for the MY 2010 Dodge Journey vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the anti-theft device is necessary in order to notify

law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Chrysler decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Chrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 30, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-23598 Filed 10-3-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-369 (Sub-No. 7X)]

Buffalo & Pittsburgh Railroad, Inc.— Abandonment Exemption—in Erie and Cattaraugus Counties, NY

Buffalo & Pittsburgh Railroad, Inc. (BPRR) has filed a verified notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 27.6-mile line of railroad extending from milepost 8.4 in Orchard Park, in Erie County, NY, to milepost 36 in Ashford, in Cattaraugus County, NY.

The line traverses United States Postal Service Zip Codes 14127, 14025, 14033, and 14141.

BPRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 5, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.³

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Effective July 18, 2008, the filing fee for an OFA increased to \$1,500. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

³ On September 22, 2008, the New York State Office of Parks, Recreation and Historic Preservation filed a request for the issuance of a notice of interim trail use and for imposition of a public use condition for the 27.6-mile rail line. On

A copy of any petition filed with the Board should be sent to BPRR's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BPRR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BPRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BPRR's filing of a notice of consummation by October 6, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 29, 2008.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Anne K. Quinlan,
Acting Secretary.

[FR Doc. E8-23422 Filed 10-3-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 30, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

September 26, 2008. BPRR agreed to negotiate for interim trail use/rail banking.

Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 5, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0939.

Type of Review: Extension.

Title: Interest Charge on DISC-Related Deferred Tax Liability.

Forms: 8404.

Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC-DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly

figured and paid the interest charge on a timely basis.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 17,600 hours.

OMB Number: 1545-1632.

Type of Review: Extension.

Title: REG-118662-98 (Final) New Technologies in Retirement Plans.

Description: These regulations provide that certain notices and comments required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 477,563 hours.

OMB Number: 1545-1797.

Type of Review: Extension.

Title: REG-106876-00 (Final), Revision of Income Tax Regulations under Sections 897, 1445, and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445.

Description: The collection of information relates to applications for

withholding certificates under Treas. Reg. 1.1445-1 to be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principle residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 600 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E8-23533 Filed 10-3-08; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

**Monday,
October 6, 2008**

Part II

Securities and Exchange Commission

**17 CFR Parts 230, 239, et al.
Foreign Issuer Reporting Enhancements;
Final Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240 and 249

[Release Nos. 33-8959; 34-58620; International Series Release No. 1310; File No. S7-05-08]

RIN 3235-AK03

Foreign Issuer Reporting Enhancements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a number of amendments to our rules relating to foreign private issuers that are intended to enhance the information that is available to investors. These amendments are part of a series of initiatives that seek to effect changes in our disclosure and other requirements applicable to foreign private issuers in light of market developments, new technologies and other matters in a manner that promotes investor protection and cross-border capital flows. We are adopting amendments that would enable foreign issuers to test their eligibility to use the special forms and rules available to foreign private issuers once a year, rather than continuously. We also are adopting amendments to change the deadline for annual reports filed by foreign private issuers and to eliminate an option under which foreign private issuers are permitted to omit segment data from their U.S. GAAP financial statements, and an amendment to the rule pertaining to going private transactions to reflect the new termination of reporting and deregistration rules for foreign private issuers. In addition, we are adopting amendments that would revise the annual report and registration statement forms used by foreign private issuers to improve certain disclosures provided in these forms.

DATES: *Effective Date:* December 5, 2008.

Compliance Dates: The compliance dates are as follows:

- A foreign private issuer must begin to comply with the requirements to provide information pursuant to Item 16G of Form 20-F, which pertains to corporate governance disclosures, for its first fiscal year ending on or after December 15, 2008.

- A foreign private issuer must begin to comply with the amendment to eliminate Instruction 3 to Item 17 of Form 20-F, which permits the omission of segment data in certain circumstances; to provide disclosure pursuant to Item 16F of Form 20-F,

which pertains to a change in registrant's certifying accountant; and to provide disclosure about American Depositary Receipts fees and payments for its first fiscal year ending on or after December 15, 2009.

- A foreign private issuer must begin to comply with the requirement to file its Form 20-F annual report on an accelerated basis for its first fiscal year ending on or after December 15, 2011. A foreign private issuer must begin to comply with the requirements to file transition reports pursuant to the amendments to Rules 13a-10(g)(3) and 15d-10(g)(3), and special financial reports pursuant to the amendments to Rule 15d-2(a) for its first fiscal year ending on or after December 15, 2011. In addition, a foreign private issuer must begin to comply with the requirement to prepare financial statements according to Item 18 of Form 20-F in the annual report filed for its first fiscal year ending on or after December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551-3450, or Craig Olinger, Deputy Chief Accountant, Division of Corporation Finance, at (202) 551-3400, or Jeffrey J. Minton, Chief Counsel, Office of the Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 405¹ of Regulation C,² Form F-1,³ Form F-3⁴ and Form F-4⁵ under the Securities Act of 1933 ("Securities Act"),⁶ Form 20-F⁷ under the Securities Exchange Act of 1934 ("Exchange Act"),⁸ and Exchange Act Rules 3b-4,⁹ 13a-10,¹⁰ 13e-3,¹¹ 15d-2,¹² and 15d-10.¹³ The amendments will: (1) Permit foreign issuers to test their qualification to use the forms and rules available to foreign private issuers on an annual basis, rather than on the continuous basis that is currently required; (2) Accelerate the filing deadline for annual reports filed on Form 20-F by foreign private issuers

¹ 17 CFR 230.405.

² 17 CFR 230.400 *et seq.*

³ 17 CFR 239.31.

⁴ 17 CFR 239.33.

⁵ 17 CFR 239.34.

⁶ 15 U.S.C. 77a *et seq.*

⁷ 17 CFR 249.220f.

⁸ 15 U.S.C. 78a *et seq.*

⁹ 17 CFR 240.3b-4.

¹⁰ 17 CFR 240.13a-10.

¹¹ 17 CFR 240.13e-3.

¹² 17 CFR 240.15d-2.

¹³ 17 CFR 240.15d-10.

under the Exchange Act by shortening the filing deadline from six months to four months after the foreign private issuer's fiscal year-end, after a three-year transition period; (3) Eliminate an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e-3 under the Exchange Act by reflecting the new termination of reporting and deregistration rules for foreign private issuers;¹⁴ (5) Require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F; and (6) Amend Form 20-F to require foreign private issuers to disclose information about changes in the issuer's certifying accountant, the fees and charges paid by holders of American Depositary Receipts ("ADRs"), the payments made by the depositary to the foreign issuer whose securities underlie the ADRs, and, for listed issuers, the differences in the foreign private issuer's corporate governance practices and those applicable to domestic companies under the relevant exchange's listing rules.

Table of Contents

I. Summary	
A. Proposed Amendments	
B. Principal Comments Received	
C. Summary of Adopted Amendments	
II. Discussion of the Amendments	
A. Annual Test for Foreign Private Issuer Status	
B. Accelerating the Reporting Deadline for Form 20-F Annual Reports	
C. Segment Data Disclosure	
D. Exchange Act Rule 13e-3	
E. Requiring Item 18 Reconciliation in Annual Reports and Registration Statements	
F. Disclosure About Changes in a Registrant's Certifying Accountant	
G. Annual Disclosure About ADR Fees and Payments	
H. Disclosure About Differences in Corporate Governance Practices	
III. Other Matters Considered	
IV. Paperwork Reduction Act	
V. Cost-Benefit Analysis	
VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation	
VII. Regulatory Flexibility Act Certification	
VIII. Statutory Authority and Text of Final Amendments	

¹⁴ Although amending Rule 13e-3 is consistent with other Commission initiatives that seek to address changes in our disclosure and other requirements applicable to foreign private issuers, the amendment also will apply to transactions effected by domestic issuers.

I. Summary

A. Proposed Amendments

In February 2008, we published for comment proposed amendments to rules and forms aimed at enhancing the disclosures that foreign private issuers provide to investors in the U.S. public markets, and improving the accessibility of our public markets to these issuers.¹⁵ The proposed amendments reflect changes in the nature of the global capital markets, as well as advances in technology with respect to the gathering and processing of information, that have occurred since the Commission's adoption of Form 20-F almost 30 years ago. When the Commission adopted Form 20-F, the form used by foreign private issuers¹⁶ to register a class of securities under the Exchange Act and to file annual reports,¹⁷ our objective was to elicit disclosures from foreign private issuers that were as equal as practicable to that provided by domestic issuers.¹⁸ Because of differences in the national laws and accounting regulations applicable to foreign private issuers, we provided specified disclosure accommodations in Form 20-F.¹⁹ However, we indicated that our assessment of the appropriate disclosure requirements for foreign private issuers was part of an ongoing evolutionary process.²⁰

As noted previously in the Proposing Release, there has been a movement toward greater international agreement on the accounting and other non-financial statement disclosures that should be provided by issuers. The Commission has undertaken a number of initiatives that recognize this. For example, we adopted rules last December to permit foreign private issuers to file financial statements with the Commission that are prepared in accordance with International Financial

Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"), without reconciliation to generally accepted accounting principles ("GAAP") used in the United States.²¹ Those rules are part of our efforts to foster a single set of globally accepted accounting standards. We also incorporated into Form 20-F all of the *International Organization of Securities Commission's ("IOSCO")*²² *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*,²³ which pertain to prospectuses prepared by foreign issuers for public offerings and listing of equity securities.²⁴

In addition, the Commission has sought to facilitate cross-border capital flows. When implementing certain provisions of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"),²⁵ we also provided several significant accommodations to foreign private issuers relating to the requirements on internal control over financial reporting²⁶ and audit committee

²¹ Release No. 33-8879 (Dec. 21, 2007) [73 FR 986].

²² IOSCO consists of securities regulators from 109 countries ("ordinary" members) who are committed to working together "to promote high standards of regulation to maintain just, efficient and sound markets." IOSCO, General Information About IOSCO, at <http://www.iosco.org/about/>.

²³ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf>. The IOSCO Technical Committee recently published the *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers* (2007), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf>. These IOSCO Principles apply to prospectuses used by foreign issuers for offerings and listings of debt securities. The Commission's prospectus disclosure requirements for debt securities offered by foreign private issuers, which are contained in Form 20-F, are also consistent with these IOSCO Principles.

²⁴ Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900].

²⁵ 15 U.S.C. 7201 *et seq.*

²⁶ We permitted foreign private issuers to comply with the requirement to include in their annual reports management's report on the company's internal control over financial reporting and the auditor's attestation on a delayed basis compared to some domestic issuers. See Release No. 33-8392 (Feb. 24, 2004) [69 FR 9722] (extending the original compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for companies that are not accelerated filers and for foreign private issuers, to fiscal years ending on or after July 15, 2005); Release No. 33-8545 (Mar. 2, 2005) [70 FR 11528] (adopting an additional one-year extension of the compliance dates for companies that are non-accelerated filers and for foreign private issuers filing annual reports on Forms 20-F or 40-F); Release No. 33-8730A (Aug. 9, 2006) [71 FR 47056] (extending for one year the date by which a foreign private issuer that is an accelerated filer and that files annual reports on Forms 20-F or 40-F must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting). Foreign private issuers also are permitted to report changes in their internal controls over financial reporting on an annual basis, rather than on a

independence.²⁷ These accommodations recognized non-U.S. practices and requirements. In March 2007, we also adopted rules that made it easier for foreign private issuers to terminate their reporting obligations and deregister their securities.²⁸ We adopted these rules to address concerns that the burdens and uncertainties associated with terminating their registration and reporting obligations under the Exchange Act could serve as a disincentive to foreign private issuers accessing the U.S. public capital markets.²⁹ In a related release,³⁰ we are adopting amendments to Exchange Act Rule 12g3-2(b)³¹ to expand the availability of this exemption from registration under Section 12(g)³² of the Exchange Act for foreign private issuers, so that a qualified foreign private issuer that meets specified conditions can claim the exemption automatically without regard to the number of its U.S. shareholders. In another related release, we are adopting amendments that expand and enhance the utility of the cross-border exemptions for business combination transactions.³³ These amendments are expected to encourage offerors and issuers in cross-border business combinations, and rights offerings by foreign private issuers to permit U.S. security holders to participate in these transactions in the same manner as other holders.

As part of our continuous assessment of our rules pertaining to foreign private issuers, we proposed amendments to rules and forms last February that reflected our view that some of the disclosure accommodations that we provided to foreign private issuers almost 30 years ago may no longer be appropriate or necessary in light of global market developments and advancements in technology.³⁴ These proposed rule and form amendments sought to balance our dual objectives of enhancing the reporting of information by foreign private issuers, including the timeframe within which investors can have access to that information, and improving the accessibility of our public markets to these issuers. Among other things, we proposed amendments that would permit reporting foreign issuers

quarterly basis as is required of domestic issuers. Release No. 33-8238 (June 5, 2003) [68 FR 36636].

²⁷ See Release No. 33-8220 (Apr. 9, 2003) [68 FR 18788].

²⁸ Release No. 34-55540 (Mar. 27, 2007) [72 FR 16934].

²⁹ *Id.*

³⁰ Release No. 34-58465 (Sept. 5, 2008).

³¹ 17 CFR 240.12g3-2(b).

³² 15 U.S.C. 78l(g).

³³ See Release No. 34-58597 (Sept. 19, 2008).

³⁴ See Proposing Release, *supra* note 15.

¹⁵ Release No. 33-8900 (Feb. 29, 2008) [73 FR 13404] (hereinafter "Proposing Release").

¹⁶ "Foreign private issuer" is defined in Exchange Act Rule 3b-4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) A majority of its officers and directors are citizens or residents of the United States, (ii) more than 50 percent of its assets are located in the United States, or (iii) its business is principally administered in the United States.

¹⁷ Form 20-F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

¹⁸ See Release No. 34-16371 (Nov. 29, 1979) [44 FR 70132] (hereinafter "Form 20-F Adopting Release").

¹⁹ See *id.*

²⁰ See *id.*

to assess their eligibility to use the special forms and rules available to foreign private issuers once a year, rather than on a continuous basis. We also proposed amendments to change the deadline for annual reports filed by foreign private issuers and to eliminate an option under which foreign private issuers may omit segment data from their U.S. GAAP financial statements, and an amendment to the rule pertaining to going private transactions to reflect the new termination of reporting and deregistration rules for foreign private issuers. In addition, we proposed amendments that would revise Form 20-F to improve certain disclosures provided in that form.

B. Principal Comments Received

We received 52 comment letters in response to our proposed rule and form amendments from a variety of market participants.³⁵ The respondents included businesses, financial and legal associations, law firms, accounting firms, depository banks, financial services providers, and one securities exchange. The comments received on most of the proposed amendments were supportive, although commenters provided useful suggestions on several of the proposals. Almost all of the comments received on the proposal to permit foreign issuers to test their status as foreign private issuers once a year, rather than continuously, were very positive. Commenters noted that this proposal would reduce compliance burdens on foreign private issuers, as well as align the testing and transition requirements for foreign private issuer status with the requirements applicable to determining accelerated filer and small reporting company status.

We also received mainly positive comments about the proposed amendments to require foreign private issuers to disclose in their Form 20-F annual reports changes in and disagreements with their certifying accountant, and significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards. While several commenters believed the proposed disclosure would be more useful if it was made on a more timely basis, commenters generally noted that the proposal regarding disclosure of a change in a registrant's certifying accountant would provide

investors with useful information, and would be consistent with the disclosure currently required of domestic issuers. With respect to the corporate governance proposal, commenters noted the usefulness of having all of a foreign private issuer's corporate governance information in one location.

In addition, we received primarily positive feedback on our proposed amendments to eliminate the option permitting foreign private issuers to omit segment data from their U.S. GAAP financial statements, to reference the new termination of reporting and deregistration rules applicable to foreign private issuers in Exchange Act Rule 13e-3, and to require annual disclosure in Form 20-F about ADR fees and payments. These proposals were supported as providing useful information to investors, and in the case of Rule 13e-3, providing regulatory consistency with the new deregistration and termination of reporting provisions.

We received a wide range of comments on some of the other proposed amendments. In particular, many commenters opposed the proposal to accelerate the reporting deadline for Form 20-F annual reports. We had proposed amendments to accelerate the filing deadline for Form 20-F annual reports by shortening the filing deadline from 6 months to within 90 days after the foreign private issuer's fiscal year-end in the case of large accelerated and accelerated filers, and to within 120 days after a foreign private issuer's fiscal year-end for all other issuers, after a two-year transition period. Commenters expressed concern that many foreign private issuers must prepare financial statements according to local GAAP under their home country's laws and regulations, and would need additional time to prepare their financial statements in accordance with U.S. GAAP or IFRS as issued by the IASB, or to reconcile their financial statements to U.S. GAAP for the Form 20-F. Commenters also noted that many foreign private issuers need additional time to translate information into English for Form 20-F, and to provide the additional non-financial statement disclosures that are required in Form 20-F compared to their home country annual reports. Other commenters noted that the proposed acceleration deadlines could well result in filing dates that override annual report filing deadlines in some issuers' home countries, and that, in any case, foreign private issuers provide their home country annual reports to U.S. investors through the submission of those reports on Form 6-K.

We also received a wide range of responses to our proposed amendments to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. Although some commenters noted that the proposal to require Item 18 information would provide investors with more complete financial information, others expressed concern about the necessity of the proposed amendments, since many countries are gradually requiring footnote disclosures comparable to U.S. GAAP and Regulation S-X.

C. Summary of Adopted Amendments

We have carefully considered the comments received regarding the proposed amendments and have concluded that it is appropriate to adopt the amendments, substantially as proposed in the case of most of the amendments. Some of the amendments have been modified to reflect suggestions offered by commenters in response to questions posed in the Proposing Release.

The adopted amendments will:

- Permit reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than on a continuous basis, which is currently required;
- Accelerate the reporting deadline for annual reports filed on Form 20-F by foreign private issuers from six months to four months after the issuer's fiscal year-end, after a three-year transition period;
- Amend Form 20-F by eliminating an instruction to Item 17 of that Form that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements;
- Amend Exchange Act Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted deregistration and termination of reporting rules applicable to foreign private issuers;
- Eliminate the availability of the limited U.S. GAAP reconciliation option that is contained in Item 17 of Form 20-F for foreign private issuers that are only listing a class of securities on a U.S. national securities exchange, or only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. We also are eliminating this limited reconciliation option for annual reports filed on Form 20-F, and for certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, offerings upon the

³⁵ These comment letters are available on the Commission's Internet Web site, located at <http://www.sec.gov/comments/s7-05-08/s70508.shtml>, and in the Commission's Public Reference Room in its Washington, DC headquarters.

conversion of securities, or offerings of investment grade securities. Thus, all foreign private issuers that are required to provide a U.S. GAAP reconciliation must do so pursuant to Item 18 of Form 20-F, although required third party financial statements could continue to be prepared pursuant to Item 17 of Form 20-F;

- Amend Form 20-F to require disclosure in annual reports filed on that Form about any changes in the registrant's certifying accountant;
- Amend Form 20-F to require annual disclosure of the fees and other charges paid by holders of ADRs to depositaries, as well as any payments made by depositaries to the foreign private issuers whose securities underlie the ADRs; and
- Amend Form 20-F to require annual disclosure of the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards.

II. Discussion of the Amendments

A. Annual Test for Foreign Private Issuer Status

The Commission's longstanding policy of facilitating the access of foreign issuers to the U.S. capital markets is evidenced by the various accommodations to foreign practices and policies it has provided to foreign issuers that qualify as "foreign private issuers."³⁶ For many companies, the determination of whether they qualify as a foreign private issuer is important because of these accommodations and exemptions.³⁷ However, to make sure that it qualifies for these accommodations, a foreign private issuer that has close to 50% of its outstanding voting securities held of record by U.S. residents may find that it must monitor on a continuous basis the different factors used to assess foreign private issuer status.³⁸ This can

³⁶ See *supra* note 16 for the definition of "foreign private issuer."

³⁷ For example, Exchange Act Rule 3a12-3(b) [17 CFR 240.3a12-3(b)] exempts foreign private issuers from the Commission's proxy rules [17 CFR 240.14a-1 *et seq.*], and from the insider stock trading reports and short-swing profit recovery provisions under Section 16 [15 U.S.C. 78p] of the Exchange Act. Foreign private issuers also provide any interim reports on the basis of home country regulatory and stock exchange practices, rather than the quarterly reports that are required of U.S. issuers, and executive compensation disclosure on an aggregate basis if the information is reported on such a basis in the issuer's home country. See Item 6.B. of Form 20-F.

³⁸ See note 16 above for a description of the factors that foreign issuers must monitor. The Commission's staff has taken the position that, for

result in uncertainty for these issuers as to which reporting and regulatory requirements will apply to them within a given period of time, as well as increase their compliance burdens.³⁹ This also can result in confusion for investors if the issuer needs to switch between foreign and domestic reporting forms within the same fiscal year.

We proposed amendments to permit foreign private issuers to assess their status once a year on the last business day of their second fiscal quarter as a means of providing greater certainty to both issuers and investors as to the status of these foreign issuers within a given period of time. This is the same date used to determine accelerated filer status under Exchange Act Rule 12b-2⁴⁰ and smaller reporting company status in Item 10(f)(2)(i)⁴¹ of Regulation S-K.⁴²

The vast majority of comments received on the proposed amendments were highly supportive. Commenters noted that the proposed amendments would benefit investors by eliminating confusion in the markets as to an issuer's status if an issuer needs to move between foreign and domestic reporting forms in the same fiscal year. Commenters also noted that the proposed amendments would also eliminate uncertainty for issuers, and possibly reduce accounting, audit and

the purpose of the exemptions contained in Exchange Act Rule 3a12-3(b), foreign private issuers need to assess their status at the end of each fiscal quarter. In addition, they must assess their status at the completion of any purchase or sale by the issuer of its equity securities (other than in connection with an employee benefit plan or compensation arrangement, conversion of outstanding convertible securities, or exercise of outstanding options, warrants or rights), any purchase or sale of assets by the issuer other than in the ordinary course of business, and any purchase of equity securities of the issuer in a public tender offer or exchange offer by a non-affiliate. Foreign Private Issuers Relying on Rule 3a12-3(b) under the Exchange Act, SEC No-Action Letter, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,667 (Mar. 30, 1993). This letter will be superseded by the amendments.

³⁹ For example, if a foreign issuer concludes that it does not qualify as a foreign private issuer in the middle of its fiscal year, it may find it difficult to change its basis of accounting to U.S. GAAP in order to comply on a timely basis with the reporting requirements applicable to domestic issuers under the Exchange Act. These issuers also face the challenge of modifying their information and processing systems to comply with the domestic reporting and registration regime, as well as the executive compensation disclosure requirements, proxy rules and Section 16 reporting requirements that are applicable to domestic issuers.

⁴⁰ 17 CFR 240.12b-2.

⁴¹ 17 CFR 229.10(f)(2)(i).

⁴² 17 CFR 229.10 *et seq.* See also Release No. 33-8876 (Dec. 19, 2007) [73 FR 934] (adopting amendments to the disclosure and reporting requirements under the Securities Act and the Exchange Act to expand the number of companies that qualify for the scaled disclosure requirements for smaller reporting companies).

information technology fees that would otherwise result if an issuer changed its status mid-year. They noted that substantial incremental effort is often required to comply with the Commission's domestic issuer requirements. Commenters also pointed out that the proposed amendments would simplify compliance with the Commission's regulations because this approach would be more consistent with our approach to determining accelerated filer and smaller reporting company status. One commenter suggested that the proposal would increase certainty and predictability for foreign companies with respect to their reporting obligations, which should in turn enhance the attractiveness of the U.S. capital markets by removing a disincentive to register with the Commission.⁴³

After considering the comments received, we are adopting the amendments as proposed. In addition, we are adopting the proposed amendments that would require a foreign private issuer that determines that it no longer qualifies as a foreign private issuer on the last business day of its second fiscal quarter to comply with the reporting requirements and use the forms prescribed for domestic companies beginning on the first day of the fiscal year following the determination date. We proposed this amendment to give these issuers six months' advance notice that they will need to transition to the domestic forms and applicable reporting requirements. All of the comments that we received on this aspect of the proposal were highly supportive. Under the amendments as adopted, a foreign issuer that does not qualify as a foreign private issuer as of the end of its second fiscal quarter in 2009 would file a Form 10-K in 2010 for its 2009 fiscal year. The issuer would also begin complying with the proxy rules and Section 16, and become subject to reporting on Forms 8-K and 10-Q on the first day of its 2010 fiscal year.

We also are adopting amendments to permit a reporting company that qualifies as a foreign private issuer to avail itself of the foreign private issuer accommodations, including use of the foreign private issuer forms and reporting requirements, beginning on the determination date on which it establishes its eligibility as a foreign private issuer. Although the majority of comments received on this aspect of the proposal were positive, one

⁴³ See comment letter by Organization for International Investment.

commenter⁴⁴ contended that the disclosure provided in domestic forms was important enough to require the issuer to file on such forms for the balance of the fiscal year. Nonetheless, we are adopting this distinction because we believe the new foreign private issuer, who would be eligible to file its annual report for that fiscal year on Form 20-F, need not continue to provide reports on Form 8-K and 10-Q for the remainder of that fiscal year. An issuer that qualifies as a foreign private issuer should be allowed to enter the foreign reporting system immediately and furnish reports on Form 6-K,⁴⁵ especially because it will be subject to the reporting requirements of its home regulator. Any reports that it files with its home regulator will be available to the Commission and the public through its Form 6-K submission. We note that the approach that we are taking here is consistent with our approach to smaller reporting companies.⁴⁶

A few commenters supported requiring a foreign issuer to notify the market, either in the form of a press release and/or via notification on the issuer's Web site, when it has determined that it has switched its status from domestic issuer to foreign private issuer, or vice versa. Currently, however, foreign private issuers do not provide a notice when they switch from domestic issuer to foreign private issuer status. Moreover, such a notice requirement would be an anomaly in our regulations. In similar contexts, such as with respect to accelerated filers or smaller reporting companies, we do not require issuers to notify the market when they have switched status. Therefore, we are not adopting a notice requirement, although we note that by furnishing a current report on Form 6-K rather than Form 8-K after it changes status, a foreign issuer in essence will be providing notice that it has switched status. Of course, issuers may voluntarily provide explicit notice to

⁴⁴ See comment letter from CFA Institute Centre for Financial Market Integrity ("CFA Institute").

⁴⁵ Foreign private issuers submit current reports to the Commission on Form 6-K [17 CFR 249.306]. Unlike Form 8-K [17 CFR 249.308], which is the current report form used by domestic issuers, there are no specific substantive disclosures that are required by Form 6-K. Instead, foreign private issuers furnish under cover of Form 6-K whatever information that they (i) make or are required to make public pursuant to the law of the jurisdiction of their domicile or in which they are incorporated or organized, or (ii) file or are required to file with a stock exchange on which their securities are traded and which was made public by that exchange, or (iii) distribute or are required to distribute to their security holders. These reports are required to be furnished promptly after the material contained in the report is made public.

⁴⁶ 17 CFR 229.10(f)(2)(i).

the market when they switch from domestic to foreign private issuer status in order to provide enhanced transparency to investors. We note that issuers that lose their foreign private issuer status would be required to file quarterly reports on Form 10-Q or current reports on Form 8-K immediately, thereby effectively providing prompt notice of their new status because of the change in the forms used.

In addition to the amendments noted above, we are adopting amendments requiring a Canadian issuer that files registration statements and Exchange Act reports using the multijurisdictional disclosure system ("MJDS")⁴⁷ to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter. Currently, a Canadian issuer that is eligible to file a Form 40-F⁴⁸ annual report at the end of a fiscal year is presumed to be eligible to use Form 40-F, as well as Form 6-K, from the date of filing until the end of its next fiscal year.⁴⁹ The amendments would require a Canadian issuer that plans to use the MJDS to test its foreign private issuer status earlier in the year. However, it would continue to have to test its eligibility to file annual reports on Form 40-F based on all of the other requirements of that Form, such as public float, at the end of the fiscal year.⁵⁰ The amendments would not change the responsibility of the Canadian issuer to check its eligibility to use Forms 40-F and 6-K at the end of its fiscal year.

With respect to MJDS filings made pursuant to the Securities Act, a Canadian issuer must test its ability to use the MJDS registration statement forms at the time of filing. As a result of the amendments, a Canadian MJDS filer that does not qualify as a foreign private issuer on the last day of its second fiscal quarter would immediately not be able use the MJDS forms for Securities Act offerings. However, the issuer would still be able to use the other foreign private issuer registration statement forms, such as Form F-3, until the end of its fiscal year.⁵¹

Although we received many comments generally supporting this

⁴⁷ 17 CFR 239.37 to 17 CFR 239.41 and 17 CFR 249.240f.

⁴⁸ 17 CFR 249.240f. MJDS filers file annual reports on Form 40-F and current reports on Form 6-K.

⁴⁹ See Release No. 33-6902 (June 21, 1991) [56 FR 30036] (adopting the MJDS system).

⁵⁰ See *id.*

⁵¹ Form F-3 permits a foreign private issuer to incorporate by reference its latest Form 40-F. See Item 6(a) of Form F-3.

approach to MJDS filers, several commenters had additional recommendations. A few commenters suggested that a registrant that did not qualify for MJDS status on the testing date should be permitted to use the MJDS registration statement forms until the end of its fiscal year. Some commenters also suggested that MJDS filers be permitted to test their MJDS status on the last business day of their second fiscal quarter, rather than at the end of the year. Other commenters argued that the foreign private issuer eligibility test should be conducted at the end of the year in conjunction with the test for MJDS eligibility, or alternatively, that MJDS filers should be required to test their foreign private issuer eligibility status twice a year.

After carefully considering all of these comments, we have decided to adopt the MJDS-related amendments as proposed because we believe this approach takes into account the substantial accommodations that have been provided to MJDS filers, including significant disclosure accommodations.⁵² As a result of the amendments, the new foreign private issuer testing date will provide MJDS filers with advance notice that they may need to switch to the domestic issuer forms after the end of the fiscal year. Even if an MJDS filer determines that it no longer qualifies as a foreign private issuer as of the test date, it will be permitted to use the Securities Act registration statement forms, although not the MJDS forms, available to foreign private issuers for the remainder of that fiscal year. The new date for testing foreign private issuer status will provide a substantial accommodation for MJDS filers because, currently, these filers are required to use the domestic forms as soon as they lose their foreign private issuer status.

B. Accelerating the Reporting Deadline for Form 20-F Annual Reports

We proposed amendments to the filing due date for Form 20-F to reflect technological and other developments that have occurred in the nearly 30 years that have elapsed since Form 20-

⁵² Under the MJDS, eligible Canadian issuers may satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of the Canadian securities regulatory authorities. The MJDS also allows certain cash tender and exchange offers for securities of Canadian issuers to proceed in accordance with Canadian and provincial or territorial tender offer requirements, instead of in accordance with the Commission's tender offer requirements. For more specific information about the accommodations provided to MJDS issuers, see Release No. 33-6902, *supra* note 49.

F was first adopted. Our proposed amendments would have accelerated the reporting due date for annual reports filed on Form 20-F by foreign private issuers from six months to 90 days after the issuer's fiscal year-end in the case of large accelerated filers and accelerated filers, and to 120 days after the issuer's fiscal year-end for all other issuers, after a two-year transition period. We also proposed similar conforming amendments for transition reports filed on Form 20-F when a foreign private issuer changes its fiscal year.

In the Proposing Release, we noted that technological advances have made it easier for companies to process and disseminate information quickly. Investors also evaluate and react to information in a shorter timeframe, and many now expect to receive information on a faster basis. Although some information about foreign private issuers is available through their earnings releases and other announcements, investors currently may not have access to the more complete disclosure contained in an issuer's Form 20-F annual report until six months after the end of the issuer's fiscal year. Although the longer filing due date for these reports was initially established as an accommodation to the different disclosure requirements in the foreign private issuers' home jurisdictions,⁵³ many companies that operate globally gather and evaluate information on a vastly expedited basis compared to almost 30 years ago, when Form 20-F was adopted. As a result, such a delayed filing date for these reports is no longer necessary. In the Proposing Release, we also noted that foreign private issuers in many jurisdictions are expected to file annual reports with their home securities regulator on a faster timetable.⁵⁴

⁵³ Form 20-F Adopting Release, *supra* note 18 (noting that the Commission decided not to adopt a filing due date for Form 20-F annual reports of four months after the registrant's fiscal year-end in deference to commenters' concerns about the need for more time to comply with applicable foreign regulations, which at that time often permitted annual reports to be furnished to shareholders more than four months after the issuer's fiscal year-end).

⁵⁴ For example, the European Union's ("EU") Transparency Directive requires companies listed on an EU regulated market to file their annual financial reports four months after the end of each financial year at the latest. Directive 2004/109/EC of the European Parliament and of the Council (Dec. 15, 2004). All EU member states were required to implement the Transparency Directive by January 20, 2007. Canadian issuers are also required to file their annual financial statements within a similar timeframe. Under *National Instrument 51-102 Continuous Disclosure Obligations*, a reporting Canadian issuer must file its annual financial statements within 90 to 120 days after its most recently completed financial year-end, depending on its status as a "venture issuer". Israeli companies

We received 49 comment letters on the proposed amendments. Some commenters expressed support for the accelerated deadlines as proposed. One of these commenters, a professional association of investment professionals,⁵⁵ urged the Commission to move toward requiring the same filing requirements for foreign private issuers as for domestic issuers. This commenter noted that the value of information in financial statements decreases as the gap between the date of the financial statements and the date of their release increases. This commenter also noted that recently the financial position of some companies has deteriorated significantly over relatively short periods of time. Outdated financial information may make it more likely that investors will misjudge both the viability of the issuer and the value of its securities. Another supportive commenter, an accounting firm,⁵⁶ noted that accelerating the deadline for Form 20-F would provide investors with timelier and more useful information. It also noted that the overwhelming majority of foreign private issuers' home country securities regulators already have annual report deadlines of either three or four months. However, this commenter pointed out that although a 90-day reporting deadline for accelerated and large accelerated filers would be earlier than their home country deadlines for some issuers, this would still be an accommodation compared to the deadlines of 75 or 60 days faced by their same-sized U.S. counterparts, respectively. This commenter also acknowledged that for foreign private issuers that are still required to reconcile home country GAAP to U.S. GAAP, a 90-day reporting deadline could impose additional, significant burdens. As a result, it recommended accelerating the deadline for these issuers to within 120 days after the foreign private issuer's fiscal year-end. Another commenter, a foreign private issuer,⁵⁷ supported the proposed amendments and indicated that it believed that the amendments would not impose any unreasonable burdens on foreign registrants. However, it also expressed concern about accelerating

are required to file their annual reports within three months of the end of their reporting year, provided that the report is submitted 14 days or more before the date fixed for convening the general meeting at which the company's financial statements will be presented, or within three days of the date when the company's accountant signed his audit opinion, whichever is earlier. Regulation 7, Israeli Securities Regulations (Periodic and Immediate Reports).

⁵⁵ See comment letter from CFA Institute.

⁵⁶ See comment letter from Ernst & Young ("EY").

⁵⁷ See comment letter from Vodafone.

the reporting deadline for financial statements of non-registrants that are included in the Form 20-F, especially those required to be filed pursuant to Rule 3-09⁵⁸ of Regulation S-X.

We received many more comments expressing concerns about the proposed due dates. Several commenters noted that the burdens faced by foreign issuers in producing Form 20-F was not related to size (*i.e.*, accelerated or non-accelerated filer), but to whether the issuer needs to produce a second set of full financial statements in accordance with U.S. GAAP, or a reconciliation from their home country accounts to U.S. GAAP.⁵⁹ Commenters noted that the proposal could create a burden for many issuers that are still required to prepare their financial statements in accordance with local GAAP, especially those from some of the emerging markets.⁶⁰ In addition, in certain jurisdictions, bank issuers are required to prepare their primary financial statements in accordance with local GAAP.⁶¹ We also received comments that *Industry Guide 3, Statistical Disclosure by Bank Holding Companies*, calls for additional disclosures, as well as the classification and disclosure of certain information under different standards than required in the foreign private issuer's home country.⁶²

Commenters also noted that many foreign private issuers need more time than provided under the proposed amendments to translate local financial information into English for Form 20-F;⁶³ to provide the additional disclosures of Form 20-F, such as Item 5 (Operating and Financial Review and Prospects) and the Commission's industry guide disclosures; and to satisfy certain requirements of the Sarbanes-Oxley Act.⁶⁴ Commenters noted that many foreign private issuers have limited resources, and must use the same staff to comply with both local filing requirements and the Commission's filing requirements. As a result of the proposed amendments, the staff of these issuers would have to

⁵⁸ 17 CFR 210.3-09.

⁵⁹ See, *e.g.*, comment letters from American Bar Association ("ABA") and Linklaters LLP ("Linklaters").

⁶⁰ See, *e.g.*, comment letter from Linklaters.

⁶¹ See comment letters from Mitsubishi UFJ Financial Group, Inc. ("Mitsubishi") and Mizuho.

⁶² See comment letter from Institute of International Bankers, Mitsubishi, and Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss").

⁶³ See, *e.g.*, comment letters from Cleary Gottlieb Steen & Hamilton ("Cleary Gottlieb"), Mitsubishi, Mizuho, and Sociedad Quimica y Minera de Chile S.A.

⁶⁴ These requirements, which are generally not required in home country reporting, include the Section 302 and 906 officer certifications and the review of internal controls over financial reporting.

produce financial information for home country purposes on the same timetable as for Form 20-F, rather than in *seriatim*, as is currently the case.

In addition, commenters indicated that in some cases the proposed due dates would require foreign private issuers to file their Form 20-F before they are required to file their annual reports in their home country. The proposed due dates would in effect override domestic filing requirements.⁶⁵ Commenters noted that when foreign private issuers complete their annual reports for home country filing purposes, they furnish significant financial information to the Commission on Form 6-K, often within 90 days after their fiscal year-end. These commenters asserted that investors typically make investment decisions based on the fiscal year-end financial results disclosed in Form 6-K or through the issuer's press releases, rather than through the Form 20-F.

Several commenters recommended that the Commission adopt a deadline that was linked to the foreign private issuer's home country requirements for filing annual reports. These commenters suggested that foreign private issuers be required to file Form 20-F annual reports within a specified period after the issuer's home country report is filed.⁶⁶ Others, recognizing that such a deadline would be difficult to implement and confusing to investors, recommended that the Commission accelerate the due date for Form 20-F for all foreign private issuers to five months after the issuer's fiscal year-end.⁶⁷

After carefully considering all of the comments, as well as the benefits to investors of timelier annual reports, we are adopting amendments to accelerate the due date for annual reports filed on Form 20-F, but with modifications from the proposed amendments that respond to some of the concerns that were expressed. Under the amendments as

⁶⁵ See, e.g., comment letters from Linklaters (noting that the 90-day due date is earlier than the annual report due dates required by the EU Member States, China and Brazil) and Gold Fields Limited (noting that the Johannesburg Stock Exchange requires listed issuers to publish annual financial statements within six months after the end of the issuer's financial year).

⁶⁶ See comment letters from The Royal Bank of Scotland Group (recommending a due date two to three weeks after the annual report deadline in the issuer's home jurisdiction), European Issuers (recommending a due date that is one month after the due date for annual reports in the issuer's home country), PetroChina Company Limited (recommending a due date that is two months after the issuer's annual report due date in its home country).

⁶⁷ See, e.g., comment letters from Cleary Gottlieb and Mitsubishi.

adopted, all foreign private issuers will be required to file their annual reports on Form 20-F within four months after their fiscal year-end, regardless of their size, after a three-year transition period.⁶⁸ As discussed above, commenters indicated that the size of the issuer would not affect its ability to file Form 20-F on an expedited basis. Rather, the issue was whether the foreign private issuer was required to prepare a second set of full financial statements in accordance with U.S. GAAP, or a reconciliation from their home country accounts to U.S. GAAP.⁶⁹ In determining that a four-month due date would be appropriate, we note that in the next several years a majority of the foreign private issuers who file annual reports with the Commission will have incentives to use IFRS as issued by the IASB as more countries adopt IFRS as their basis of accounting, or permit companies to use IFRS as issued by the IASB as their basis of accounting. Our recent rule amendments that allow foreign private issuers to file financial statements in accordance with IFRS, as issued by the IASB, without a U.S. GAAP reconciliation should make it easier for many foreign private issuers to prepare their annual reports on Form 20-F.⁷⁰ As indicated in the Proposing Release, we did not propose amendments to change the age of financial statement requirements for registration statements under the Securities Act or Exchange Act.⁷¹

The new due date also reflects our observation that many foreign private issuers registered with the Commission have a three-month due date for filing

⁶⁸ We are not adopting a similar acceleration in the filing deadline for annual reports filed on Form 40-F, which is used by eligible Canadian issuers under the MJDS. Under the MJDS, issuers who file annual reports on Form 40-F must comply with the substantive disclosure requirements and filing deadlines established by the relevant Canadian securities regulator. In keeping with the purpose of MJDS, which is to facilitate cross-border capital flows between the United States and Canada by streamlining the registration and periodic reporting process for cross-border issuers, the Form 40-F must continue to be filed with the Commission on the same day that the information is due to be filed with the relevant Canadian securities regulatory authority, as set forth in General Instruction D.(3) of Form 40-F. However, we note that a reporting Canadian issuer that is not a "venture issuer" must file its annual financial statements on or before 90 days after its most recently completed financial year-end, while all other Canadian issuers must file their annual financial statements on or before 120 days after their most recently completed financial year-end. See *supra* note 54.

⁶⁹ See, e.g., comment letters from ABA, E&Y, and Linklaters.

⁷⁰ Release No. 33-8879, *supra* note 21.

⁷¹ Under Item 8.A.4. of Form 20-F, the last year of audited financial statements may not be older than 15 months at the time of the offering or listing.

annual reports in their home country, and would be accorded an additional month after their home country due dates to prepare the Form 20-F under the new amendments. We note that, based on a review of recent filings, a number of foreign private issuers already file their annual reports on Form 20-F well before the current six-month deadline. In addition, the new due date for Form 20-F will still provide a substantial accommodation to many foreign private issuers, since large accelerated and accelerated domestic filers are required to file annual reports on Form 10-K⁷² within 60 days and 75 days, respectively, of their fiscal year-ends.⁷³ All other domestic issuers are required to file annual reports on Form 10-K within 90 days after their fiscal year-end.⁷⁴ We will continue to monitor market developments to consider whether it would be appropriate to accelerate further the due date for Form 20-F annual reports.

The amendments that we are adopting today reflect our view that annual reports that are filed on a faster basis would not only provide investors with more timely access to these filings, but also improve the delivery and flow of reliable information to investors and the capital markets, thereby helping to improve the efficiency of the markets. The accelerated deadline for Form 20-F should enable investors in the U.S. markets to get annual reports on a more current basis. As the Commission noted when it adopted the accelerated filing dates for periodic reports filed by domestic issuers,⁷⁵ investors and analysts evaluate the more extensive information provided in periodic reports against the incremental disclosures that are made by an issuer. The accelerated due date will enable this analysis to take place at an earlier time.

Although various commenters recommended that the Form 20-F annual report due date be linked in some manner to the foreign private issuer's annual report due date in its home country, we concluded that this would be confusing for investors and

⁷² 17 CFR 249.310.

⁷³ See General Instructions A.(2)(a) and (b) of Form 10-K. At the time that we first adopted rule and form amendments to accelerate the filing of the quarterly and annual reports of reporting U.S. issuers, we noted that those amendments would increase the discrepancy in the due dates for filing annual reports between foreign private issuers and larger seasoned U.S. issuers, and indicated that we would continue to consider this issue. Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480]

⁷⁴ See General Instruction A.(2)(c) of Form 10-K.

⁷⁵ See Release No. 33-8128, *supra* note 73.

would be difficult to implement.⁷⁶ We also concluded that a due date that is five months after the foreign private issuer's fiscal year-end would not address our concerns about providing more timely information to investors.

As discussed previously, we received several comments about the potential burdens placed on foreign private issuers that provide disclosures under *Industry Guide 3*, which relates to bank holding companies. We note that the Commission's staff will consider what accommodations with regard to *Industry Guide 3* would be appropriate.

When we proposed the amendments, we proposed a two-year transition period for implementation of the accelerated deadline, but also solicited comments on whether a different transition period would be more appropriate. While we received several comments supporting a two-year transition period, several commenters noted that a three-year transition period would ease the burden on many foreign private issuers that will be required to adopt IFRS for home country reporting purposes in 2011. After considering all of the comments received, we have decided to provide a three-year transition period for implementation of the accelerated Form 20-F due date. As adopted, foreign private issuers will be required to file their annual report on Form 20-F within four months after their fiscal year-end for fiscal years ending on or after December 15, 2011. Of course, foreign private issuers may file their Form 20-F annual reports earlier than the current deadline, as numerous issuers now do.

In addition to these amendments, we are adopting amendments that conform the deadline for transition reports filed on Form 20-F, and for the filing of special financial reports⁷⁷ pursuant to Rule 15d-2 of the Exchange Act. The deadlines for these reports were based on the annual report deadlines for foreign private issuers.⁷⁸ We are amending the due dates for each of these reports so that they are consistent

with the new deadline for annual reports filed on Form 20-F.⁷⁹

C. Segment Data Disclosure

Under Item 17 of Form 20-F, foreign private issuers that present financial statements otherwise fully in compliance with U.S. GAAP may omit segment data from their financial statements, and also are permitted to have a qualified U.S. GAAP audit report as a result of this omission. We proposed an amendment to Form 20-F that would eliminate this narrow accommodation.

Most of the comments received on this proposal supported the proposed amendments. However, several commenters suggested permitting a longer transition period to the new rules. For example, a few commenters recommended a three-year transition period, so that the amendment would be effective for fiscal years on or after December 15, 2011 to align the effective date with the timeframe in which many jurisdictions will mandate IFRS reporting.

After considering all of the comments and noting that approximately five foreign private issuers in the past few years have used this accommodation, we have decided to adopt the amendment as proposed. Foreign private issuers will be required to comply with the amendment beginning with their first fiscal years ending on or after December 15, 2009. The delayed compliance date will provide foreign private issuers with sufficient time to establish internal procedures that will enable them to obtain the required information. We are amending Item 17 of Form 20-F by removing Instruction 3 to that Form, which currently permits the omission of segment data from U.S. GAAP financial statements. We believe that an accommodation that permits a few foreign private issuers to present incomplete and non-compliant U.S. GAAP financial statements is no longer necessary or appropriate, especially given recent international developments in financial reporting. For example, in order to file financial statements without reconciliation to U.S. GAAP, foreign private issuers must comply fully with IFRS as issued by the IASB, including presentation of segment data. Accordingly, we have decided not to

provide a longer transition period for the new amendment.

D. Exchange Act Rule 13e-3

We are adopting amendments to Exchange Act Rule 13e-3,⁸⁰ which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations.⁸¹ Currently, Rule 13e-3 is triggered when an issuer and/or any of its affiliates are engaged in a specified transaction or series of transactions⁸² that have either a reasonable likelihood or a purpose of causing (i) any class of equity securities of the issuer that is subject to Section 12(g) or Section 15(d)⁸³ of the Exchange Act to be held of record by less than 300 persons, or (ii) the securities to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

Rule 13e-3 requires any issuer or affiliate that engages in a Rule 13e-3 transaction to file a Schedule 13E-3⁸⁴ disclosing its plan to take the company private, and to make prompt amendments to reflect certain information about the proposed transaction. In the Schedule 13E-3, the filing party must disclose the purposes for the transaction, whether any alternative means for accomplishing the stated purposes were considered, the reasons for the structure of the transaction and why it was being undertaken at the time, the effects that the transaction would have on the issuer and its unaffiliated security holders, whether or not the filing party believes the transaction is fair to unaffiliated security holders, and the factors considered in determining fairness. Rule 13e-3(f)⁸⁵ also requires dissemination of the information required by Schedule 13E-3 to security holders within specified time periods.

When the Commission adopted Rule 13e-3, we emphasized that the Rule would be triggered only if a specified transaction has either the reasonable

⁷⁶ This difficulty would be especially evident for foreign private issuers that are listed only in the United States and are not subject to another securities regulatory reporting regime.

⁷⁷ Under Exchange Act Rule 15d-2, a special financial report must be filed if a registrant's Securities Act registration statement did not contain certified financial statements for its last full fiscal year preceding the fiscal year in which the registration statement became effective. Currently, foreign private issuers must file this special financial report by the later of 90 days after the date on which the registration statement became effective, or six months after the end of the registrant's latest full fiscal year (consistent with the current due date of Form 20-F annual reports).

⁷⁸ See Release No. 33-7026 (Nov. 3, 1993) [58 FR 60304].

⁷⁹ We also took this approach when we adopted amendments to accelerate the periodic report filing dates for domestic companies. See Release No. 33-8128, *supra* note 73; Release No. 33-8644 (Dec. 21, 2005) [70 FR 76626] (adopting further refinements to the acceleration rules). See also Release No. 33-6823 (Mar. 13, 1989) [54 FR 10306] (conforming the transition report rules to the periodic report rules).

⁸⁰ 17 CFR 240.13e-3.

⁸¹ Release No. 34-55540, *supra* note 28.

⁸² A "Rule 13e-3 transaction" is defined as (i) a purchase of any equity security by the issuer of such security or by an affiliate, (ii) a tender offer, (iii) a proxy solicitation or information statement distribution in connection with a merger or similar transaction, (iv) the sale of substantially all the assets of an issuer to its affiliate, or (v) a reverse stock split. 17 CFR 240.13e-3(a)(3)(i).

⁸³ 15 U.S.C. 78o(d).

⁸⁴ 17 CFR 240.13e-100.

⁸⁵ 17 CFR 240.13e-3(f).

likelihood or purpose of causing the termination of reporting obligations under the Exchange Act.⁸⁶ Recently, we adopted amendments to the deregistration provisions applicable to foreign private issuers that would permit them to terminate their reporting obligations under the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for their equity securities that does not depend on a head count of the issuers' U.S. security holders.⁸⁷ Although Rule 13e-3 does not reflect the termination of registration and reporting provisions that were previously applicable to foreign private issuers, we proposed to amend the Rule to better reflect the current deregistration provisions.

We received several comments on this proposal supporting our efforts to amend Rule 13e-3 to make it consistent with the recently adopted termination of reporting and deregistration provisions. However, two commenters expressed concern that the Rule could be triggered by securities transactions in the ordinary course of business, such as share repurchases.⁸⁸ One commenter also suggested that the disclosures in Schedule 13E-3 regarding fairness to unaffiliated security holders would not apply in the context of deregistration of a foreign private issuer, especially when the applicable corporate law does not require such determinations, and requested an instruction to the Schedule that would recognize this circumstance. We also received two comments suggesting that the Rule should not apply to a foreign private issuer whose shares will be traded on a foreign securities exchange, and hence subject to home country and/or foreign securities exchange reporting obligations, because its home country disclosures will continue to be available and furnished to the Commission pursuant to Rule 12g3-2(b). One commenter also cited concerns that the application of the Rule could deter the entry of foreign private issuers into the U.S. markets.

At this time, we believe that amending Rule 13e-3 as proposed will modernize one of the Rule's two specified going private effects and assure that the Rule operates consistently with an important policy purpose expressed at its initial

⁸⁶ Release No. 34-16075 (Aug. 2, 1979) [44 FR 46736].

⁸⁷ Release No. 34-55540, *supra* note 28.

⁸⁸ See comment letters from Cleary Gottlieb and The Hundred Group of Finance Directors ("Hundred Group").

adoption.⁸⁹ By substituting a test foreign private issuers already use to deregister a class of securities in place of the "300 person" test, foreign private issuers will benefit from simplicity and uniformity when making decisions to exit the U.S. reporting system. In addition, adopting the proposed amendment will provide clarity to a Rule that does not distinguish whether the cited effect is triggered when the number of holders of record is projected to fall below 300 persons in the United States or worldwide. Amending Rule 13e-3 will eliminate the need to interpret its indefinite reference to "held of record by less than 300 persons."

We believe that adoption of the proposed amendment to Rule 13e-3(a)(3)(ii)(A) should have a neutral effect on foreign private issuers. As is the case under Rule 13e-3 today, foreign private issuers will remain eligible under the amended Rule to voluntarily take steps to deregister a class of securities without implicating Rule 13e-3. We also do not believe share repurchases made in the ordinary course of an issuer's business are within the scope of Rule 13e-3, as amended, when such transactions are not undertaken with the purpose or reasonable likelihood of producing one of the two going private effects specified in Rule 13e-3.⁹⁰ Currently, share repurchases are only required to comply with Rule 13e-3 to the extent undertaken with a purpose or with a reasonable likelihood of producing one of the two going private effects identified in Rule 13e-3.⁹¹ Because the

⁸⁹ Release No. 34-16075, *supra* note 86. The Rule 13e-3 adopting release explained that the Rule was intended to apply when one of the transactions identified in the Rule was undertaken with a purpose of or had a reasonable likelihood of terminating the issuer's reporting obligations and consequently depriving security holders of the benefits of public ownership. See subsection (a) under "Discussion."

⁹⁰ We understand that a trading market may not exist in the U.S. for the shares of a foreign private issuer. For purposes of the Williams Act, ADRs and similar instruments that represent an ownership interest in a class of securities are not considered a class of securities separate from the foreign private issuer's underlying shares. See Release No. 33-6894 (May 23, 1991) [56 FR 24420] at Section II.D.2.

⁹¹ 17 CFR 240.13e-3(a)(3)(ii). See also Release No. 34-14185 (Nov. 17, 1977) [42 FR 60090]. The Rule 13e-3 proposing release explains, "In his testimony before Congress on the provision that was to become Section 13(e)(1), then Commission Chairman Cohen recognized that, while there might be 'perfectly legitimate corporate purposes' [] for a corporation to purchase its own securities, purchases by a corporation of its own securities can be used to affect the control of the corporation. The management may cause the corporation to repurchase shares for the purpose of preserving or improving the management's control position or to counteract the tender offer or other takeover bid." See Hearings on S. 510 Before the Subcomm. on

amendment only seeks to provide regulatory consistency with the new deregistration and termination of reporting provisions, Rule 13e-3, as amended, will continue to govern share repurchases made in the ordinary course of an issuer's business only when such repurchases are executed with the purpose or reasonable likelihood of causing security holders to lose "the benefits of public ownership,"⁹² and in this case the benefits of U.S. reporting. Accordingly, we are adopting the amendment to Rule 13e-3(a)(3)(ii)(A)⁹³ as proposed. Under the amended Rule, the cited effect is deemed to have occurred when: A domestic or foreign private issuer becomes eligible under Exchange Act Rule 12g-4⁹⁴ to deregister a class of securities; a foreign private issuer becomes eligible under Exchange Act Rule 12h-6⁹⁵ to deregister a class of securities or terminate a reporting obligation; or such issuers become eligible under Exchange Act Rule 12h-3⁹⁶ or Exchange Act Section 15(d) to have a reporting obligation suspended.⁹⁷

When a foreign private issuer or domestic issuer engages in a Rule 13e-3 transaction that would cause the termination or suspension of its registration or reporting obligations under the Exchange Act, Rule 13e-3 is intended to provide the issuer's security holders with one last opportunity to obtain information about the issuer and consider their alternatives. This is equally true in the context of a foreign private issuer or domestic issuer that plans to complete one of the transactions specified in Rule 13e-3(a)(3) for purposes of deregistering a class of securities or terminating or suspending a reporting obligation as it is for a foreign private issuer or domestic issuer that has executed one of the specified Rule 13e-3(a)(3) transactions and is ceasing to file reports because the number of its shareholders falls below 300.

Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. 37 (1967) ("Senate Hearings") Hearing on H.R. 14475, S. 510 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce 15 (1967) ("House Hearings").

⁹² Release No. 34-16075, *supra* note 86.

⁹³ 17 CFR 240.13e-3(a)(3)(ii)(A).

⁹⁴ 17 CFR 240.12g-4.

⁹⁵ 17 CFR 240.12h-6.

⁹⁶ 17 CFR 240.12h-3.

⁹⁷ We have made a technical modification to the proposed amendments to Rule 13e-3 to make clear that the Rule may be triggered when a domestic or foreign private issuer's Section 15(d) reporting obligations are suspended pursuant to Section 15(d) or Exchange Act Rule 12h-3.

E. Requiring Item 18 Reconciliation in Annual Reports and Registration Statements

We are adopting amendments to eliminate the option to provide financial statements according to Item 17 of Form 20-F in annual reports and registration statements filed on that form. Currently, a foreign private issuer that is only listing a class of securities on a national securities exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering of those securities may provide financial statements according to Item 17 of Form 20-F. In addition, foreign private issuers may provide financial statements according to Item 17 for their annual reports on Form 20-F. Under Item 17, a foreign private issuer must prepare its financial statements and schedules in accordance with U.S. GAAP, or IFRS as issued by the IASB. If its financial statements and schedules are prepared in accordance with another basis of accounting, the issuer must include a reconciliation to U.S. GAAP. This reconciliation must include a narrative discussion of reconciling differences, a reconciliation of net income for each year and any interim periods presented, a reconciliation of major balance sheet captions for each year and any interim periods, and a reconciliation of cash flows for each year and any interim periods.⁹⁸ In contrast, if a foreign private issuer that presents its financial statements on a basis other than U.S. GAAP, or IFRS as issued by the IASB, provides financial statements under Item 18 of Form 20-F, it must provide all the information required by U.S. GAAP and Regulation S-X, in addition to the reconciling information for the line items specified in Item 17.

To eliminate this distinction between the disclosure provided to the primary and secondary markets, we proposed amendments to require Item 18 information for foreign private issuers that are only listing a class of securities on an exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering. We also proposed amendments to require Item 18 information for foreign private issuers that file annual reports on Form 20-F.

In addition, foreign private issuers that are making certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, offerings upon the conversion of securities or offerings of investment

grade securities,⁹⁹ currently are permitted to provide Item 17 financial statements in their registration statements under the Securities Act. To ensure that the same type of financial information is provided regardless of the type of offering that is being made, we proposed amendments to require foreign private issuers to file financial statements that comply with Item 18 when registering these types of offerings under the Securities Act.

Many commenters supported the proposals as useful to investors. Commenters noted that the amendments would help ensure that investors receive the complete financial information required by U.S. GAAP and Regulation S-X.¹⁰⁰ However, several other commenters expressed concern about the benefits of the amendments in light of the potential compliance burdens. They also asserted that other countries are gradually requiring footnote disclosures comparable in scope to U.S. GAAP and Regulation S-X, such that the proposed amendments are not necessary.¹⁰¹

After carefully considering all of the comments, we are adopting the amendments as proposed. We believe that a reconciliation that includes the footnote disclosures required by U.S. GAAP and Regulation S-X¹⁰² can provide important additional information.¹⁰³ We also note that the majority of foreign private issuers who do not prepare financial statements in accordance with U.S. GAAP elect to provide financial information pursuant to Item 18, rather than Item 17, of Form

20-F.¹⁰⁴ Under the amendments, Form 20-F and the registration statement forms available to foreign private issuers under the Securities Act (Forms F-1, F-3 and F-4) will require the disclosure of financial information according to Item 18 of Form 20-F for registration statements filed under both the Exchange Act and the Securities Act, as well as for annual reports.

When we proposed the amendments, we did not propose eliminating the availability of Item 17 disclosures for Canadian MJDS filers in light of the special recognition accorded to MJDS filings. We also noted that more countries, including Canada, are expected to adopt IFRS as their basis of accounting, or to permit companies to use IFRS as issued by the IASB as their basis of accounting in the next few years. As a result, we concluded that it would not be appropriate to eliminate the availability of Item 17 in MJDS registration statements. We also proposed maintaining the availability of Item 17 for financial statements of non-registrants that are required to be included in a foreign or domestic issuer's registration statement, annual report or other Exchange Act report. These include significant acquired businesses under Rule 3-05¹⁰⁵ of Regulation S-X, significant equity method investees under Rule 3-09 of Regulation S-X, and exempt guarantors¹⁰⁶ under Rule 3-10(i)¹⁰⁷ of Regulation S-X. The commenters who commented on these accommodations supported them, so the amendments as adopted will not apply to MJDS filers or to the financial statements of non-registrants.

Several commenters who supported the proposed amendments recommended that we establish a compliance date that would provide foreign private issuers with a longer transition period before they would be required to prepare financial statements pursuant to Item 18.¹⁰⁸ Among other

⁹⁹ The Commission recently proposed amendments permitting foreign private issuers to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 in a registration statement or private offering document if the issuer met the proposed new Form F-3 transaction eligibility criteria for registering primary offerings of non-convertible securities. The proposed eligibility criteria would eliminate the current requirement in Form F-3 of an investment grade rating by a nationally recognized statistical rating agency. Release No. 33-8940 (July 1, 2008) [73 FR 40106]. We requested comment on whether, if we decided not to eliminate the option of providing Item 17 financial disclosure, we should revise the Form F-3 eligibility requirements as proposed. *Id.* at Section II.B.2.

¹⁰⁰ *See, e.g.*, comment letter from the CFA Institute.

¹⁰¹ *See, e.g.*, comment letter from Cleary Gottlieb.

¹⁰² 17 CFR Part 210.1-01 *et seq.*

¹⁰³ Under Item 17, an issuer is not required to provide the footnote disclosures required by U.S. GAAP and Regulation S-X, unless these disclosures are otherwise required under its home country GAAP. For example, the footnote disclosures related to pension assets, obligations and assumptions, lease commitments, business segments, tax attributes, stock compensation awards, financial instruments and derivatives, among many others, are not required under Item 17 unless they are otherwise required by the issuer's home country GAAP.

¹⁰⁴ A foreign private issuer's latest annual report filed on Form 20-F and all subsequent Form 20-F annual reports are incorporated by reference into its Form F-3 shelf registration statement. See Item 6 (Incorporation of Certain Information by Reference) in Form F-3. General Instruction I.B.1. of Form F-3 requires foreign private issuers to provide financial statements that comply with Item 18 for primary offerings.

¹⁰⁵ 17 CFR 210.3-05.

¹⁰⁶ A guarantor that is required to file separate financial statements must comply with Item 18.

¹⁰⁷ 17 CFR 210.3-10(i).

¹⁰⁸ *See* comment letters from BDO Seidman, LLP ("BDO"), Center for Audit Quality ("CAQ"), Deloitte Touche Tohmatsu ("Deloitte"), E&Y, Grant Thornton LLP ("Grant Thornton"), KPMG IFRG Limited ("KPMG"), and PricewaterhouseCoopers LLP ("PricewaterhouseCoopers").

⁹⁸ *See* Item 17(c)(2) of Form 20-F.

things, these commenters noted that the foreign private issuers that provide the Item 17 reconciliation in their annual reports tend to be smaller companies, and that these companies would face significant burdens on their financial accounting and reporting systems if they are required to provide the additional Item 18 disclosures, as well as comply with the accelerated due date for Form 20-F, at the same time. In addition, they noted that many countries, such as Canada, will be adopting IFRS in 2011. Aligning the compliance date for the adopted amendments with the date on which many countries will be adopting IFRS would reduce the potential burdens on these issuers.

For the reasons enumerated above, we are establishing a compliance date that should provide foreign private issuers with sufficient time to transition to the Item 18 requirements when preparing their financial statements. A foreign private issuer that currently prepares its financial statements according to Item 17 of Form 20-F will not be required to prepare financial statements pursuant to Item 18 until it files an annual report for its first fiscal year ending on or after December 15, 2011. The longer transition period should reduce the impact of these amendments on many of the affected issuers. In addition, because foreign private issuers that prepare financial statements in accordance with IFRS, as issued by the IASB, are not required to prepare a reconciliation to U.S. GAAP, we expect that the number of companies that will be affected by the amendments will be small.

F. Disclosure About Changes in a Registrant's Certifying Accountant

Domestic companies currently report any changes in and disagreements with their certifying accountant in a current report on Form 8-K and in a registration statement on Form 10¹⁰⁹ under the Exchange Act,¹¹⁰ as well as in their registration statements filed on Forms S-1¹¹¹ and S-4¹¹² under the Securities Act. Among other things, this disclosure provides information about potential opinion shopping situations by issuers. "Opinion shopping" generally refers to the search for an auditor that is willing to support a proposed accounting treatment that is designed to help a

company achieve its reporting objectives, even though that treatment could frustrate reliable reporting.¹¹³

Foreign private issuers have not been required to provide this disclosure.¹¹⁴ However, the issues underlying the need for this disclosure also apply to foreign private issuers, and the relationship between issuers and their auditors in this area would seem to be as important for investors. Moreover, foreign private issuers that are listed on the New York Stock Exchange ("NYSE") are already required by that Exchange to notify the public about a change in their auditors,¹¹⁵ although this information is required to be furnished under cover of Form 6-K, which does not have the substantive disclosure requirements of Form 8-K.¹¹⁶ As a result, we proposed amendments that would require substantially the same types of disclosures currently provided by domestic issuers about changes in and disagreements with their certifying accountant. After reviewing the comment letters received on these proposed amendments, most of which were generally supportive, we are adopting the amendments substantially as proposed. As discussed below, in response to a question on this point in the Proposing Release, several commenters suggested that we extend this disclosure requirement to all registration statements, not just initial registration statements filed by foreign private issuers. We have modified the proposal accordingly.

The few commenters who expressed opposition to the proposed amendments, either in whole or in part, expressed concern that foreign private issuers may be required to disclose more information about their former auditors in their Form 20-F annual reports than is required under their home country law.¹¹⁷ In addition, some commenters encouraged the Commission to research and evaluate whether compliance with the proposed requirements would be frustrated or precluded when the

disclosure pertains to a foreign-based certifying accountant because of home-country legal requirements, such as privacy laws. Other commenters recommended that we consider mechanisms to require foreign private issuers to provide the disclosure on a timelier basis than proposed.

After considering all of the comments received, we believe that the amendments as proposed achieve an appropriate balance among all of the views that were expressed. Given the usefulness of the information to investors, we believe that foreign private issuers should be required to disclose substantially the same information provided by domestic issuers. Several commenters believed the value of the information to investors would be diminished by the potential time between the change in accountants and the proposed disclosure.¹¹⁸ We recognize that foreign private issuers will be disclosing the information on a delayed basis in their annual reports and registration statements, compared to the current basis required by domestic issuers. However, we do not believe it would be appropriate to adopt a separate current report requirement for foreign private issuers to report this information because they are already required to furnish to the Commission on Form 6-K the material information that they provide to their home country regulator, to their security holders and to the public. To the extent that information about a change in certifying accountant is required by the foreign private issuer's home country, the information would be disclosed in a Form 6-K. Introducing an additional U.S. current report requirement outside of the traditional Form 6-K reporting requirements does not seem appropriate at this time. In addition, because the new disclosure requirement may require a foreign private issuer to disclose more information about its former auditors than may be required by its home country law, permitting foreign private issuers to prepare and provide the disclosure in their annual reports may help reduce the burdens of reporting this information.

With respect to the concern expressed by some commenters regarding potential conflicts between the proposed disclosure and home country legal requirements, we note that we asked commenters to provide details of any restrictions under the foreign issuer's home country law or regulations that

¹¹³ See Release No. 33-6766 (Apr. 7, 1988) (adopting amendments to Form 8-K, Regulation S-K and Schedule 14A [17 CFR 240.14a-101] related to disclosure concerning a change in a registrant's certifying accountant).

¹¹⁴ When we proposed the adoption of Form 20-F, we proposed a disclosure requirement soliciting information about changes in the registrant's certifying accountant. Release No. 34-14128 (Nov. 2, 1977) [42 FR 58684] (contained in proposed Item 24). The disclosure item was not included in Form 20-F. Form 20-F Adopting Release, *supra* note 18.

¹¹⁵ Section 204.03 of the NYSE Listed Company Manual.

¹¹⁶ See *supra* note 45 for a discussion of the differences between Forms 6-K and 8-K.

¹¹⁷ See comment letters from CAQ, Deloitte, Hundred Group, Linklaters, and Sullivan & Cromwell LLP.

¹¹⁸ See comment letters from AngloGold Ashanti Limited; BDO; CAQ; Deloitte; E&Y; Grant Thornton; Harmony Gold Mining Company Limited and PricewaterhouseCoopers.

¹⁰⁹ 17 CFR 249.210.

¹¹⁰ In their annual reports on Form 10-K, domestic issuers do not provide the same type of change of accountant disclosure, since they should have reported this information on a more current basis on Form 8-K. However, they do provide the disclosures required by Item 304(b) of Regulation S-K [17 CFR 229.304(b)].

¹¹¹ 17 CFR 239.11.

¹¹² 17 CFR 239.25.

would prohibit an auditor from reporting to a foreign regulator about disagreements with the issuer. Most of the commenters did not provide any examples of home country law or regulations that would prohibit such disclosure, but suggested that we conduct further research about possible conflicts.¹¹⁹

As adopted, Item 16F of Form 20-F will elicit the same types of change of accountant disclosures obtained in Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K,¹²⁰ including the disclosure requirements of Item 304(a) of Regulation S-K,¹²¹ which are referenced in Form 8-K, and Item 9 (Changes in and Disagreements with Accountants on Accounting and Financial Disclosure) of Form 10-K,¹²² which refers to the disclosure requirements of Item 304(b) of Regulation S-K. However, because foreign private issuers do not file Forms 8-K and 10-K and are not otherwise subject to Item 304 of Regulation S-K, we are adopting amendments requiring them to provide disclosure about changes in and disagreements with their certifying accountants in their annual reports on Form 20-F, as well as in their registration statements filed on Forms 20-F, F-1, F-3 and F-4.

We are also adopting amendments to Forms F-1, F-3 and F-4, which are used to register public offerings of securities by foreign private issuers under the Securities Act, to require the new Item 16F disclosure requirement about the issuer's changes in and disagreements with their certifying accountant. Although we had not proposed requiring Item 16F disclosure for repeat registrants, we solicited comments on whether this was disclosure that should be provided in connection with all registration statements filed by a foreign private issuer under the Securities Act. Some commenters supported this approach. They noted that this information would be useful in Securities Act registration statements filed by repeat issuers, especially if the change in accountant or disagreement occurred after the filing of the Form 20-F annual report and before the filing of the next Securities Act registration statement.¹²³ As a result, we

are adopting amendments to Forms F-1, F-3 and F-4 that will require Item 16F disclosure by all registrants, including repeat issuers. We are also amending Form F-3 so that Item 16F disclosure will be provided in a registration statement at effectiveness, as well as in a prospectus used in connection with a shelf offering.

New Item 16F requires substantially the same information required by Item 304 of Regulation S-K, which contains the disclosure requirements applicable to domestic issuers. Among other things, Item 16F requires an issuer to disclose whether an independent accountant that was previously engaged as the principal accountant to audit the issuer's financial statements, or a significant subsidiary on which the accountant expressed reliance in its report, has resigned, declined to stand for re-election, or was dismissed. Item 16F also requires an issuer to disclose any disagreements or reportable events that occurred within the issuer's latest two fiscal years and any interim period preceding the change of accountant. Item 16F(b) solicits disclosure about whether, during the fiscal year in which the change of accountants took place or during the subsequent year, the issuer had similar, material transactions to those which led to the disagreements with the former accountants, and whether such transactions were accounted for or disclosed in a manner different from that which the former accountants would have concluded was required. If so, Item 16F(b) requires the issuer to disclose the existence and nature of the disagreement or reportable event, and also to disclose the effect on the financial statements if the method that would have been required by the former accountants had been followed.

Although the disclosure requirements contained in Item 16F are substantially similar to the disclosure requirements applicable to domestic issuers in Item 304 of Regulation S-K, as proposed, we have eliminated or modified some of the due dates described in Item 304(a)(3) of Regulation S-K because the disclosure is being made on an annual, rather than on a current, basis. For example, although Item 16F would require the issuer to provide a copy of the disclosures that it is making in response to Item 16F to the former accountant, it would not require the issuer to provide the disclosures within the timeframe specified in Item 304(a)(3) of Regulation S-K.¹²⁴ In addition, we expect that the

former accountant would be able to furnish the issuer with a letter stating whether it agrees with the statements made by the issuer in response to Item 16F and, if not, stating the respects in which it does not agree, and that the issuer would be able to file the former accountant's letter as an exhibit to the annual report or registration statement that contains this disclosure at the time that the annual report or registration statement is due. Item 304(a)(3) provides that if the former accountant's letter is not available at the time that the report or registration statement is filed, then the issuer can file the letter with the Commission within ten business days after the filing of the report or registration statement. Because foreign private issuers would be permitted to provide the disclosure in their annual reports, we believe that this accommodation would not be necessary unless the change in accountant occurred less than 30 days prior to the filing of the annual report¹²⁵ or registration statement. As adopted, Item 16F would permit a delayed filing of the former accountant's letter in an annual report or registration statement only if the change in accountant occurred within this 30-day timeframe.

Foreign private issuers will be required to comply with the amendments beginning with their first fiscal year ending on or after December 15, 2009. The delayed compliance date should provide these issuers and their accountants with sufficient time to establish internal procedures that will enable them to comply with the new requirements.

G. Annual Disclosure About ADR Fees and Payments

We are adopting amendments that will require foreign private issuers to disclose information about the fees and other charges paid in connection with ADR facilities in their annual reports on Form 20-F.¹²⁶ We proposed these amendments because we believe that ADR holders can benefit from enhanced disclosure in this area, especially in light of new depositary fees that are being charged to ADR holders in connection with sponsored ADR facilities. These new fees include an

¹¹⁹ One commenter suggested that South African law may preclude such disclosures, *see* comment letter from Deloitte, but the four South African issuers that commented on the Proposing Release did not cite specific restrictions under South African law.

¹²⁰ Item 4.01 of Form 8-K.

¹²¹ 17 CFR 229.304(a).

¹²² Item 9 of Form 10-K.

¹²³ *See* comment letters submitted by CAQ, the CFA Institute, and KPMG.

¹²⁴ Item 304(a)(3) of Regulation S-K requires the issuer to provide a copy of the disclosures to the former accountant no later than the day that the disclosures are filed with the Commission. 17 CFR 229.304(a)(3).

¹²⁵ Under General Instruction C.(b) of Form 20-F, the information provided in a Form 20-F annual report should be as of the latest practicable date, unless a disclosure item in the Form explicitly directs otherwise. As a result, changes in the foreign private issuer's certifying accountant that occur after the issuer's fiscal year-end, but before the Form 20-F is filed, would be disclosed in the issuer's Form 20-F annual report.

¹²⁶ We noted the importance of transparency in fee disclosures in our 1991 ADR concept release, Release No. 33-6894, *supra* note 90.

annual fee for general depository services, a fee that was formerly prohibited by some exchanges.¹²⁷ Although ADR fees are disclosed in the ADR itself,¹²⁸ ADR holders frequently purchase their ADRs in bookentry form and do not see the disclosures provided in the physical certificate.

Many commenters on the proposed amendments supported the disclosure of the ADR fees paid by ADR holders, noting that complete and regular disclosure of these fees is important in light of their impact on investors. A few, however, noted that these fees are already disclosed in the deposit agreement, on the Form F-6 registration statement filed to register the ADRs with the Commission under the Securities Act, as well as in the Form 20-F that is filed to register the deposited securities under the Exchange Act.¹²⁹ After considering these comments, we have concluded these ADR fees are significant enough to warrant enhanced transparency to investors on an annual basis and will present a minimal additional disclosure burden on foreign private issuers.

We received a variety of comments in reaction to the proposed disclosure requirement regarding payments made by depository banks to the foreign private issuers whose securities underlie the ADRs. Some commenters expressed concern that the disclosure would have a detrimental effect on the ADR market, would constitute commercially sensitive proprietary information, and would be immaterial to investors.¹³⁰ Other commenters, however, noted that disclosure of such payments would limit the risk that depository banks would attempt to defray the incentive payments through increased charges to ADR holders.¹³¹ One commenter suggested that disclosure of the aggregate amount of incentive payments made to issuers by depositories, rather than detailed disclosure of each payment, would

avoid undermining competition among depositories.¹³²

After considering all of these comments, we are adopting the amendments to Form 20-F as proposed. The amendments to Form 20-F revise Item 12.D.3. and the Instructions to Item 12 to solicit disclosure of the fees paid by ADR holders on an annual basis, including the annual fee for general depository services. In addition, foreign private issuers will be required to disclose the payments that they have received from depositories in connection with their ADR programs. Because we believe that the value of the information provided would be diminished if it was provided only on an aggregate basis, issuers must disclose the information on a per payment basis. We believe that information about the types of payments made by depositories to issuers would be useful to investors because it would enable them to understand the purpose of the payments. The amendments to Item 12.D.3. and the Instructions to Item 12 of Form 20-F will require disclosure of these payments in the registration statement on Form 20-F that is filed for the deposited securities, as well as in the annual report, for sponsored ADR facilities.

To address the concerns about the disclosure of incentive payments made by depositories to foreign issuers, a foreign private issuer will not be required to disclose this information until it files its annual report for its first fiscal year ending on or after December 15, 2009. This should permit depository banks and foreign issuers to make appropriate contractual arrangements, as necessary, in light of the new disclosure requirements.

H. Disclosure About Differences in Corporate Governance Practices

We proposed amendments that would require listed foreign private issuers to disclose in their Form 20-F annual reports the significant ways in which their corporate governance practices differ from the practices followed by domestic companies listed on the same exchange. This proposal recognized that foreign private issuers are subject to different legal and regulatory requirements in their home jurisdictions, and as a result frequently follow different corporate governance practices from domestic companies. Many U.S. securities exchanges exempt listed foreign private issuers from many of their corporate governance

requirements,¹³³ but require these issuers to disclose the significant ways in which their corporate governance practices differ from those followed by domestic companies under the relevant exchange's listing standards. Foreign private issuers may provide this disclosure either in their annual reports, and/or on their Web sites,¹³⁴ and many foreign private issuers opt to provide this disclosure on their Web sites, rather than in their annual reports.

We reiterate, as we stated when we proposed the amendments, that this disclosure does not imply a preference for any particular type of corporate governance regime. Again, we note that the disclosure should be useful to investors by facilitating their ability to monitor the issuer's corporate governance practices.

The vast majority of comments received on this proposal were supportive. Commenters noted that the proposed amendment would benefit investors by enabling them to access all of the corporate governance information about a foreign private issuer in one location. They also noted that the information would provide investors with relevant disclosure of any updates on a foreign private issuer's corporate governance practices.

After considering these comments, we are adopting amendments as proposed to require disclosure of this information in the Form 20-F annual reports filed by all foreign private issuers whose securities are listed on a U.S. exchange. New Item 16G would require foreign private issuers to provide a concise summary in their annual reports of the significant ways in which the foreign private issuer's corporate governance practices differ from the corporate governance practices followed by domestic companies under the relevant exchange's listing standards.

Several commenters expressed the view that the new disclosure item should not require disclosure of more

¹²⁷ See Release No. 34-53978 (June 13, 2006) [71 FR 35474] (notice of NYSE rule change to eliminate the requirement that certain services be provided without charge to ADR holders).

¹²⁸ As a technical matter, an ADR is the physical certificate that evidences American Depository Shares ("ADS"), and an ADS is the security that represents an ownership interest in deposited securities. However, the terms are often used interchangeably by market participants.

¹²⁹ Rule 12a-8 [17 CFR 240.12a-8] exempts depository shares registered on Form F-6 [17 CFR 239.36] under the Securities Act, but not the underlying deposited securities, from the operation of Section 12(a) of the Exchange Act [15 U.S.C. 78(a)].

¹³⁰ See, e.g., comment letters from the ABA, The Bank of New York Mellon, and Deutsche Bank.

¹³¹ See, e.g., the comment letter from Depository Management Corporation.

¹³² See *id.*

¹³³ See Section 303A.00 of the NYSE Listed Company Manual (noting that foreign private issuers are permitted to follow home country practice instead of the applicable corporate governance provisions of the NYSE Listed Company Manual, except for the requirements pertaining to audit committees, certain certifications, and certain corporate governance disclosures); Section 4350(a)(1) of the Nasdaq Manual (noting that requirements pertaining to audit committees and audit opinions apply, among other things); and Section 110 of the Amex Company Guide (stating that in evaluating the listing application of a foreign private issuer, "the Exchange will consider the laws, customs and practices of the applicant's country of domicile, to the extent not contrary to the federal securities laws").

¹³⁴ See Section 303A.11 of the NYSE Listed Company Manual; Section 4350(a)(1) of the Nasdaq Manual; and Section 110 of the Amex Company Guide.

information than foreign issuers currently provide to the exchanges upon which their securities are listed.¹³⁵ Another commenter proposed modifications to the proposed text of Item 16G out of concern that the proposed requirement would inadvertently result in long, boilerplate disclosures.¹³⁶ Other commenters supported presentation of the information in a tabular format, while others expressed concern that requiring a particular type of presentation could encourage a “tick box” approach to corporate governance.¹³⁷ In response to these comments, we have revised new Item 16G to more exactly track the analogous disclosure requirements of some of the exchanges,¹³⁸ without specifying a particular format for the presentation of this information. We expect that the disclosure provided in response to new Item 16G will be similar, if not the same, as the disclosure that foreign private issuers currently provide in response to the corporate governance disclosure requirements of the exchange on which their securities are listed. Issuers should assess, and in the future re-assess, the format that they believe is most appropriate in their circumstances.

III. Other Matters Considered

At the time that we proposed the amendments discussed above, we also proposed to amend Item 17(a) of Form 20-F to require foreign private issuers to provide, in certain circumstances, the financial information required by Rule 3-05 and Article 11¹³⁹ of Regulation S-X. These rules pertain, respectively, to the financial statements that must be provided for significant, completed acquisitions and the preparation of pro forma financial statements. Although domestic companies must present the financial statements of significant acquired businesses and pro forma financial information in their registration statements under both the Securities Act and the Exchange Act, as well in a Form 8-K current report,¹⁴⁰

foreign private issuers only provide this information in the registration statements that they file under the Securities Act and the Exchange Act.

We proposed amendments to require foreign private issuers to provide the financial information elicited by Rule 3-05 and Article 11 of Regulation S-X in their Exchange Act annual reports. Because foreign private issuers do not file current reports on Form 8-K, we did not propose imposing a requirement that this financial information be presented on a more current basis than annually. We proposed requiring foreign private issuers to provide financial information in their annual reports on Form 20-F about highly significant acquisitions completed during the most recent fiscal year covered by their annual report on that Form. As proposed, the disclosure requirement would have been triggered at the 50% or greater level of significance,¹⁴¹ and would have required the provision of financial statements for three fiscal years as prescribed by Rule 3-05(b)(2)(iv) of Regulation S-X.

We received several comments on this proposal. Although many commenters supported the proposal, several also expressed concern about the timeliness of the information that would be provided, since it would be provided in the foreign private issuer’s periodic reports (*i.e.*, its annual report), rather than on a current basis. Other commenters questioned the value of requiring foreign private issuers to provide historical financial statements of significant acquirees for three fiscal years. One commenter recommended that foreign private issuers be afforded the flexibility to include financial information based on the relevant IFRS and local auditing standards, and to omit financial information when it cannot be produced without unreasonable burden or expense.¹⁴² Another commenter suggested that we should defer to home country disclosure requirements, and require financial

statements only with respect to the most recently completed fiscal year, unless home country law requires more.¹⁴³ This commenter suggested that this approach would avoid the imposition of unnecessary burdens on foreign private issuers, as well as inconsistent disclosure obligations on the issuer, and would avoid creating a disparity in the information available to investors in the issuer’s home country and the United States. We are not adopting these amendments at this time, but will continue to consider the proposal in light of the concerns expressed.

IV. Paperwork Reduction Act

A. Background

The final amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).¹⁴⁴ We have submitted the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.¹⁴⁵ The titles for the affected collections of information are:

- (1) “Form 20-F” (OMB Control No. 3235-0288);
- (2) “Form F-1” (OMB Control No. 3235-0258);
- (3) “Form F-3” (OMB Control No. 3235-0256); and
- (4) “Form F-4” (OMB Control No. 3235-0325).

Form 20-F sets forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers under the Exchange Act, as well as many of the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Forms F-1, F-3 and F-4 were adopted pursuant to the Securities Act, and set forth the disclosure requirements for registration statements filed by foreign private issuers to offer securities to the public.

The hours and costs associated with preparing, filing and sending these forms and complying with these rules constitute reporting and cost burdens imposed by each collection of information. 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 information collection requirements related to Forms 20-F, F-1, F-3 and F-4 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on

¹³⁵ See, e.g., the comment letters from the ABA, CAQ, Deloitte, and E&Y.

¹³⁶ See comment letter from Cleary Gottlieb.

¹³⁷ See, e.g., comment letter from the British Bankers’ Association.

¹³⁸ See Section 303A.11 of the NYSE Listed Company Manual; Section 110 of the Amex Company Guide.

¹³⁹ 17 CFR 210.11 *et seq.*

¹⁴⁰ Item 2.01 of Form 8-K requires domestic issuers to disclose certain information when they or one of their majority-owned subsidiaries complete an acquisition or disposition of a significant amount of assets, other than in the ordinary course of business. The Form 8-K filed to report this acquisition or disposition must be filed within four business days after the event has occurred. See General Instruction B.1. of Form 8-K. For a

business acquisition significant at the 20% or greater level that must be disclosed pursuant to Item 2.01, Item 9.01 of Form 8-K requires the financial statements of the acquired business to be filed with the initial report of the acquisition on Form 8-K, or by amendment no later than 71 calendar days after the date that the initial report on Form 8-K is due.

¹⁴¹ The significance of an acquired business is measured by the comparison of: (1) The registrant’s investment in the acquired business (acquisition price) to the registrant’s total assets, (2) the acquired business’ total assets to the total assets of the registrant, or (3) the acquired business’ pre-tax income to the pre-tax income of the registrant. See Rule 1-02(w) [17 CFR 210.1-02] of Regulation S-X.

¹⁴² See comment letter from the New York City Bar.

¹⁴³ See comment letter from the ABA.

¹⁴⁴ 44 U.S.C. 3501 *et seq.*

¹⁴⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

the EDGAR filing system. We have based our estimates of the effect that the adopted rule and form amendments would have on those collections of information primarily on our review of the most recently completed PRA submissions for the affected rules and forms.

The amendments will: (1) Amend Rule 405 of Regulation C under the Securities Act and Exchange Act Rule 3b-4 to permit foreign issuers to test their qualification to use the forms and rules available to foreign private issuers on an annual basis, rather than on the continuous basis that is currently required; (2) Amend Form 20-F to accelerate the filing deadline for annual reports filed by foreign private issuers on Form 20-F, subject to a three-year transition period; and amend Exchange Act Rules 13a-10 and 15d-10, which pertains to transition reports filed by foreign private issuers on Form 20-F, and Exchange Act Rule 15d-2, which pertains to special financial reports filed by foreign private issuers, to conform the due dates for those reports with the due date for annual reports filed on Form 20-F; (3) Amend Form 20-F by eliminating an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliate, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations; (5) Amend Form 20-F and Forms F-1, F-3 and F-4 to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F; (6) Amend Form 20-F, Forms F-1, F-3 and F-4 to require foreign private issuers to disclose information about a change in the issuer's certifying accountant; and (7) Amend Form 20-F to require foreign private issuers to disclose the fees and charges paid by ADR holders, the payments made by the depositary to the foreign issuer whose securities underlie the ADRs, and for listed issuers, the differences in the foreign private issuer's corporate governance practices and those applicable to domestic companies under the relevant exchange's listing rules.

We have based the annual burden and cost estimates of the adopted amendments on the following estimates and assumptions:

- A foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20-F, Form F-1, Form F-3, or Form F-4; and

- Outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20-F, Form F-1, Form F-3, or Form F-4 at an average cost of \$400 per hour.¹⁴⁶

We estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.

We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to OMB for review in accordance with the PRA. Although we received many comment letters on the proposed rule amendments, none specifically addressed the estimated effects of these proposed amendments on the collection of information requirements. In response to the comments received, we have made certain modifications to the proposals. We have decided not to adopt the proposal to require disclosure of significant, completed acquisitions in the Form 20-F annual report, which will reduce our previous estimates of the reporting and cost burdens of preparing Form 20-F. As a result of comments received, we are also adopting a requirement that repeat registrants, rather than only first-time registrants, provide information about changes in and disagreements with their certifying accountant in their Securities Act registration statements. Because such an event occurs very rarely, this amendment will not significantly affect our estimate of the incremental reporting and cost burdens of this amendment. We are revising our estimates for Forms 20-F and Form F-3 accordingly. Other modifications that we have made to the proposed amendments do not affect our estimate of the incremental burden of the amendments because they will not change the amount of information required to be included by registrants in any of the affected Forms. These amendments include certain modifications to Rule 13e-3 to address technical concerns, a different

¹⁴⁶ In connection with other recent rulemakings, we have had discussions with several law firms to estimate an hourly rate of \$400 as the cost to companies for the services of outside professionals retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

accelerated due date for Form 20-F annual reports than proposed, and a longer transition period for certain amendments than originally proposed.

B. Burden and Cost Estimates Related to the Amendments

1. Form 20-F

We estimate that currently foreign private issuers file 942 Form 20-Fs each year. We assume that 25% of the burden required to produce the Form 20-Fs is borne internally by foreign private issuers, resulting in 614,891 annual burden hours borne by foreign private issuers out of a total of 2,459,564 annual burden hours. Thus, we estimate that 2,611 total burden hours per response are currently required to prepare the Form 20-F. We further assume that 75% of the burden to produce the Form 20-Fs is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$737,868,600.

The amendment to amend Form 20-F to accelerate the filing deadline for annual reports and transition reports filed on that Form will not change the amount of information required to be included in Exchange Act reports. In connection with this amendment, we are also adopting amendments to Exchange Act Rules 13a-10 and 15d-10, which pertain to transition reports filed on Form 20-F, and to Exchange Act Rule 15d-2, which pertains to special financial reports filed by foreign private issuers. Our amendments will conform the deadlines for transition reports filed on Form 20-F and for the special financial reports filed by foreign private issuers with the new deadline for annual reports filed on Form 20-F. These amendments also will not change the amount of information required to be included in Exchange Act reports. Therefore, these amendments will neither increase nor decrease the amount of burden hours necessary to prepare annual reports on Form 20-F for the purposes of the PRA.

With respect to our amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F, we estimate that approximately 200 companies that file Form 20-F will be impacted by the amendment. We expect that the amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 10,444 hours

as a result of this amendment. We expect that 25% of those increased burden hours (2,611 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (7,833 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$3,133,200 in increased costs to the respondents of the information collection as a result of this amendment.

With respect to our amendment to require disclosure about a change in the issuer's certifying accountant in annual reports and registration statements filed on Form 20-F, we estimate that approximately 90 companies that file Form 20-F will be impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of .75% (19.58 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 1,762.2 hours. We expect that 25% of those increased burden hours (440.55 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (1,321.65 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$528,660 in increased costs to the respondents of the information collection as a result of the amendment.

Our amendment to require disclosure about ADR fees and payments on an annual basis, we estimate that approximately 442 companies that file Form 20-F will be impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of .25% (6.53 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 2,886.26 hours. We expect that 25% of those increased burden hours (721.57 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (2,164.71 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$865,884 in increased costs to the respondents of the information collection as a result of the amendment.

With respect to our amendment to require annual disclosure about differences in a listed foreign private issuer's corporate practices and those applicable to domestic companies under the relevant exchange's listing rule, we estimate that approximately 783 companies that file Form 20-F will be

impacted by the amendment. The amendment will not cause a significant change in the burden hours for those foreign private issuers because they already prepare this information for the exchanges on which they are listed.

Our amendment to eliminate an instruction to Item 17 of Form 20-F, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements, we estimate that approximately 5 companies that file Form 20-F will be currently impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 261.1 hours. We expect that 25% of those increased burden hours (65.3 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (195.83 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$78,332 in increased costs to the respondents of the information collection as a result of the amendment.

Because we have decided not to adopt the proposal to amend Form 20-F to require foreign private issuers to provide certain financial information in their annual reports on that Form about a significant, completed acquisition that is significant at the 50% or greater level, we have reduced the estimated burdens and costs associated with preparing Form 20-F.

Thus, we estimate that the amendments to Form 20-F will increase the annual burden borne by foreign private issuers in the preparation of Form 20-F from 614,891 hours to 618,729.5 hours. We further estimate that the amendments will increase the total annual burden associated with Form 20-F preparation to 2,474,918 burden hours, which will increase the average number of burden hours per response to 2627. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form 20-F by outside firms to \$742,475,400.

2. Form F-1

We estimate that currently foreign private issuers file 42 registration statements on Form F-1 each year. We assume that 25% of the burden required to produce a Form F-1 is borne by foreign private issuers, resulting in 18,890 annual burden hours incurred by foreign private issuers out of a total of 75,560 annual burden hours. Thus, we

estimate that 1,799 total burden hours per response are currently required to prepare a registration statement on Form F-1. We further assume that 75% of the burden to produce a Form F-1 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$22,667,400.

We estimate that currently approximately 4 companies that file registration statements on Form F-1 will be impacted by the amendment to require foreign private issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (13.49 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total increase of 54 hours. We expect that 25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$16,200 in increased costs to the respondents of the information collection as a result of the amendment.

We estimate that none of the companies that file registration statements on Form F-1 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. In our experience, the companies that use Form F-1 are engaging in capital raising transactions, so that all registrants have been providing financial information according to Item 18. The amendment will be a technical change to the Form without any expected impact on the companies using that Form for collection of information purposes.

Thus, we estimate that the amendments to Form F-1 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-1 from 18,890 hours to 18,904 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-1 preparation to 75,614 burden hours, which will increase the average number of burden hours per response to 1800. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form F-1 by outside firms to \$22,683,600.

3. Form F-3

We estimate that currently foreign private issuers file 106 registration statements on Form F-3 each year. We assume that 25% of the burden required to produce a Form F-3 is borne by foreign private issuers, resulting in 4,399 annual burden hours incurred by foreign private issuers out of a total of 17,596 annual burden hours. Thus, we estimate that 166 total burden hours per response are currently required to prepare a registration statement on Form F-3. We further assume that 75% of the burden to produce a Form F-3 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$5,278,800.

We estimate that currently approximately 20 companies that file registration statements on Form F-3 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a 2% increase (3.32 hours) in the number of burden hours required to prepare their registration statements on Form F-3, for a total increase of 66.4 hours. We expect that 25% of these increased burden hours (16.6 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (49.8 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$19,920 in increased costs to the respondents of the information collection as a result of the amendment.

In response to comments received, we have amended F-3 to require foreign private issuers that are repeat registrants to disclose a change in or disagreement with their certifying accountant in their registration statements filed on Form F-3. As proposed, this amendment would have applied only to registration statements used in initial public offerings, and would not have been reflected in our collection of information estimates for Form F-3, since Form F-3 is not available for initial public offerings. We estimate that currently approximately 10 companies that file registration statements on Form F-3 will be impacted by this amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (1.245 hours) in the number of burden

hours required to prepare their registration statements on Form F-3, for a total increase of 12.45 hours. We expect that 25% of these increased burden hours (3.11 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (9.34 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$3,736 in increased costs to the respondents of the information collection as a result of the amendment.

Thus, we estimate that the amendments to Form F-3 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-3 from 4,399 hours to 4,418.71 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-3 preparation to 17,674.85 burden hours, which will increase the average number of burden hours per response to 167. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form F-3 by outside firms to \$5,302,455.

4. Form F-4

We estimate that currently foreign private issuers file 68 registration statements on Form F-4 each year. We assume that 25% of the burden required to produce a Form F-4 is borne internally by foreign private issuers, resulting in 24,497 annual burden hours incurred by foreign private issuers out of a total of 97,988 annual burden hours. Thus, we estimate that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F-4. We further assume that 75% of the burden to produce a Form F-4 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$29,396,400.

We estimate that currently approximately none of the companies that file registration statements on Form F-4 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. In our experience, the companies that use Form F-4 have all been providing financial information according to Item 18 because of the types of transactions that are registered on that Form, so the amendment will be a technical change to the Form without any expected impact on the companies using it.

We estimate that currently approximately 5 companies that file registration statements on Form F-4 will be impacted by the amendment to

require foreign private issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (10.81 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total increase of 54 hours. We expect that 25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$16,200 in increased costs to the respondents of the information collection as a result of the amendment.

Thus, we estimate that the amendments to Form F-4 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-4 from 24,497 hours to 24,511 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-4 preparation to 98,042 burden hours, which will decrease the average number of burden hours per response to 1,442. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form F-4 by outside firms to \$29,412,600.

5. Other Amendments

The amendments to Securities Act Rule 405 and Exchange Act Rule 3b-4 will revise the definition of "foreign private issuer" to permit foreign issuers to test their status as "foreign private issuers" on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. Our amendments will not change the amount of information required to be included in Securities Act registration statements or Exchange Act reports. Therefore, they will neither increase nor decrease the amount of burden hours necessary to prepare documents under either of those Acts for the purposes of the PRA.

In addition, we do not expect a change in the number of foreign private issuers who will be required to comply with Rule 13e-3, or the burden hours required to prepare a Schedule 13E-3. With respect to domestic issuers, although we do not expect the number of domestic issuers affected by the amendments to Rule 13e-3 to decrease, we also expect that the Rule amendments will have a negligible effect on these issuers because the

smaller reporting companies that will be affected by the amendments could voluntarily deregister and thus avoid any requirement to comply with that Rule.

V. Cost-Benefit Analysis

We are adopting amendments to our rules and forms relating to foreign private issuers that are intended to enhance the information that is available to investors, promote investor protection and facilitate cross-border capital flows.

A. Annual Test for Foreign Private Issuer Status

1. Expected Benefits

The amendments to the definition of "foreign private issuer" contained in Securities Act Rule 405 and Exchange Act Rule 3b-4 will permit reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. This is the same date used to determine accelerated filer status under Exchange Act Rule 12b-2 and smaller reporting company status in Item 10(f)(2)(i) of Regulation S-K. As a result, these adopted amendments should simplify compliance with the Commission's regulations by establishing one date that is used to ascertain an issuer's status. Foreign issuers should benefit as a result of this simplification of their compliance requirements, which could make the U.S. markets more attractive to them as a source of capital and thereby enhance the competitiveness of the U.S. markets compared to other markets. The amendments are expected to reduce the cost for foreign issuers of monitoring whether they qualify as foreign private issuers, including the time spent by management in tracking this information. If more foreign issuers are encouraged to remain in the U.S. markets and to make public offerings, investors should also benefit because this will enhance their ability to invest in the securities of foreign issuers that have been registered with the Commission, and that are thus subject to the disclosure requirements and investor protections provided by the federal securities laws.

Once a foreign issuer determines that it no longer qualifies as a foreign private issuer, the amendments will provide the issuer with at least six months' advance notice that it must comply with the domestic issuer forms and rules. This will provide these issuers with more time to comply with the reporting

requirements applicable to domestic issuers under the Exchange Act, and to modify their information and processing systems to comply with the domestic reporting and registration regime. This includes the requirements to comply with the more extensive executive compensation disclosure requirements that apply to domestic issuers, as well as the proxy rules and Section 16 reporting requirements under the Exchange Act, which do not apply to foreign private issuers. Because the amendments will provide foreign issuers with advance notice when their status changes, more foreign issuers may be encouraged to remain in the U.S. markets, and investors should benefit from the increased opportunities to invest in foreign securities in the United States.

The amendments should mitigate a burden on foreign issuers by reducing the amount of time and the resources they expend to determine their status pursuant to the four-factor test set forth in the definition of "foreign private issuer." In this respect, the amendments will be most beneficial to reporting foreign private issuers that have close to 50% of their outstanding voting securities held of record by U.S. residents, since they are most at risk of no longer qualifying as foreign private issuers. The current requirement that foreign issuers continuously test their status can result in confusion for investors if a foreign issuer needs to move between foreign and domestic reporting forms in the same fiscal year. For example, investors may be confused if a foreign issuer determines that it no longer qualifies as a foreign private issuer, and then switches from the foreign private issuer forms (Form 6-K and Form 20-F) to the domestic forms (e.g., quarterly reports on Form 10-Q) in the same fiscal year. In the case of a foreign issuer that loses its foreign private issuer status, the amendments will benefit U.S. investors by eliminating the confusion that could result if the foreign issuer switched forms in the middle of the year. However, the amendments may not be as helpful in reducing investor confusion with respect to foreign private issuers that have been reporting under the domestic regime and that will now be permitted to switch immediately to the foreign private issuer reporting regime upon the determination of their eligibility to do so.

At the same time, foreign issuers that previously did not qualify as foreign private issuers, but that determine that they will qualify as foreign private issuers, will be able to use the foreign private issuer rules and forms

immediately under the amendments. This accommodation could encourage more foreign issuers to enter the U.S. markets and to make public offerings, and should benefit investors by enhancing their ability to invest in foreign securities that have been registered with the Commission.

2. Expected Costs

Investors could incur costs from the amendments if foreign issuers that have been reporting under the domestic reporting regime immediately switch over to the foreign private issuer forms once they qualify as foreign private issuers. Because foreign private issuers have different Exchange Act reporting obligations than domestic issuers and file on different forms, some investors may find it confusing if a foreign issuer that had been reporting under the domestic reporting regime switches reporting regimes mid-year. In addition, once a foreign issuer switches status from a domestic issuer to a foreign private issuer, investors will no longer have the benefit of the disclosures that were once provided by the foreign issuer on the domestic forms.

Currently, when a foreign issuer no longer qualifies as a foreign private issuer, it must immediately file quarterly reports on Form 10-Q and current reports on Form 8-K. It must also comply with the Commission's proxy rules and the Section 16 insider stock trading and short-swing profit recovery provisions. Under the amendments, when a foreign issuer determines that it no longer qualifies as a foreign issuer, for the six months following the test date, the foreign issuer will be permitted to continue relying on the rules applicable to foreign private issuers, such as the exemption from the proxy rules and Section 16. The foreign issuer will also be allowed to use the forms reserved for foreign private issuers, and to provide current reports on Form 6-K, rather than Exchange Act reports on Forms 10-Q and 8-K. During that period, investors will not have the benefit of the additional disclosures that the foreign issuer would otherwise be required to provide.

B. Amendments to Form 20-F

The amendments will make several changes to annual reports filed on Form 20-F. We are adopting amendments to accelerate the deadline for annual reports filed on Form 20-F by foreign private issuers. We are also adopting amendments to Form 20-F to require certain additional disclosures in annual reports on that Form. The adopted amendments will require issuers to

disclose any changes in and disagreements with the registrant's certifying accountant in their Form 20-F annual reports, as well as in the Securities Act registration statements filed by registrants with the Commission. The amendments will also require disclosure of the fees and other charges paid by ADR holders to depositaries, and any payments made by depositaries to the foreign issuers whose securities underlie the ADRs. In addition, we are adopting amendments to Form 20-F to require disclosure in the annual report about the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards. Another adopted amendment will eliminate an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from the U.S. GAAP financial statements.

In addition to these amendments, we are adopting amendments to eliminate the availability of the limited U.S. GAAP reconciliation option that is contained in Item 17 of Form 20-F for foreign private issuers that are only listing a class of securities on a U.S. national securities exchange, or only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. The amendments will apply not only to registration statements filed on Form 20-F in the circumstances described above, but also to annual reports filed on that Form. Related to this adopted amendment, we are adopting amendments to eliminate the Item 17 limited reconciliation option for certain non-capital raising offerings, such as offerings pursuant to dividend reinvestment plans, offerings upon the conversion of securities, or offerings of investment grade securities. The Securities Act registration statement forms available to foreign private issuers (Form F-1, F-3 and F-4) are amended accordingly.

1. Expected Benefits

We anticipate that the adopted amendments to Form 20-F and the related amendments to the Securities Act registration statement forms available to foreign private issuers will provide a significant benefit to U.S. investors by providing them with enhanced disclosure that is more similar to the disclosures provided by domestic issuers, as well as disclosure on an accelerated basis that is more comparable to the timeframe within which domestic issuers file annual

reports. Because of the Commission's integrated disclosure system, in which approximately the same information is provided in both the primary and secondary markets, the disclosure requirements contained in Form 20-F are often more comprehensive than the disclosures required by foreign securities regulators. For example, although many foreign regulators require audited financial statements and a form of management's report in annual reports, they do not require disclosure about executive compensation, description about the issuer's business, or a Management's Discussion and Analysis.¹⁴⁷ These additional disclosures are required in the Form 20-F annual reports that foreign private issuers file with the Commission.

Based on a sample of Form 20-F annual reports filed with the Commission in the past few years, we estimate that approximately one-third of all such filers currently file Form 20-F annual reports with us within 120 days after their fiscal year-end. The adopted amendment to accelerate the due date for Form 20-F annual reports will thus affect a majority of the foreign private issuers that file on Form 20-F. As a result of the accelerated deadline, investors may be better able to compare the performance of foreign and domestic issuers, since information about both will be provided on a more contemporaneous basis.

The adopted amendments to require additional disclosure in Form 20-F annual reports should help investors better compare foreign and domestic issuers. Currently, domestic issuers provide disclosure about changes in and disagreements with their certifying accountant on a Form 8-K current report. Listed domestic issuers are also required to comply with the corporate governance requirements of the U.S. exchange on which their securities are listed, although foreign private issuers whose securities are listed on the same exchange are exempt. The adopted amendments will provide investors with more comparable information about foreign private issuers regarding possible audit opinion shopping and corporate governance practices.

The adopted amendments to require disclosure about ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADRs will make this information more readily available to investors. The placement of this disclosure in annual reports and Form

20-F registration statements should assist investors in determining the fees related to their investments in ADRs, including indirect costs that may be imposed on them if the depositary bank passes along the cost of its payments to foreign issuers to ADR holders. This should better enable investors to determine whether to invest in the ADRs of foreign issuers.

Several of the adopted amendments to Item 17 of Form 20-F may also help ensure that all foreign private issuers provide the same level of financial information, thereby facilitating a readier comparison across all issuers. This could, as a consequence, increase the attractiveness of these companies to investors. For example, the adopted amendments will eliminate the availability of the limited U.S. GAAP reconciliation option in Item 17 of Form 20-F for annual reports, registration statements on Form 20-F that do not involve a public offering, and Securities Act registration statements for certain non-capital raising transactions. Currently, most foreign private issuers that provide U.S. GAAP reconciliation disclose financial information according to Item 18 of Form 20-F. The adopted amendment will require that all foreign private issuers provide this level of disclosure. Another adopted amendment will eliminate the instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements. Although we estimate that less than 10 foreign private issuers use this instruction, the instruction creates an anomaly whereby an issuer is permitted to provide a qualified U.S. GAAP audit report.

2. Expected Costs

Foreign private issuers could incur costs from the adopted amendments to Form 20-F, and the related amendments to the Securities Act registration statements available to foreign private issuers. In order to comply with the adopted accelerated due dates, many foreign private issuers will likely have to implement new systems for preparing information during the transition period to the new rules. They could be required to prepare annual reports on a dual track, one for the annual report filed with their home country regulator and the Form 20-F annual report. According to a sample of Form 20-F annual reports filed with us, approximately one-third of all such filers file their Form 20-F annual reports within 120 days of their fiscal year-end. The cost of preparing filings on an accelerated basis may therefore vary among issuers. In addition, because of the Commission's

¹⁴⁷ In Form 20-F, this disclosure item is contained in Item 5 (Operating and Financial Review and Prospects).

integrated disclosure system, in which issuers provide approximately the same disclosures to both the primary and secondary markets, the disclosures required in Form 20-F are more substantial than the information required for annual reports in many foreign jurisdictions. The amendments could thus result in increased costs for foreign private issuers.

The amendments to provide additional disclosures in Form 20-F may also impose additional costs on foreign private issuers. With respect to the adopted disclosure regarding ADR fees and payments made by depositaries, we note that the information about ADR fees is provided in the deposit agreement and form of receipt that are attached as exhibits to the Form F-6 used to register the ADRs under the Securities Act, as well as in the Securities Act registration statement related to the offering of the securities underlying the ADRs. Because the information is already required by the Commission, albeit in filings that most retail investors are not familiar with, we do not believe that the requirement to include this information in the foreign private issuer's annual report on Form 20-F will involve significant compliance costs.

In addition, the information about the payments made by depositaries to foreign private issuers will provide important new information to investors about incentives used by depositaries that may encourage foreign private issuers to sell their securities in ADR form and with a particular depositary bank. If foreign issuers are reluctant to disclose this information, they could be discouraged from entering the U.S. markets, or, if they already have established ADR facilities in the United States, from maintaining their ADR facilities. This could reduce the opportunities for investors to invest in foreign securities in the United States.

Foreign private issuers could incur some costs related to the proposal to include information about differences in corporate governance practices for listed foreign private issuers. However, the U.S. exchanges already require that this information be prepared. For foreign private issuers that are listed on U.S. exchanges, the amendment will not involve the collection of new information or preparation of new disclosure, but will simply require that the information also be made available in the annual report, where many investors may expect to see it. As a result, we believe the compliance costs of this amendment will be relatively small. Corporate governance information elicited by the amendment

will not be required for issuers that are not listed on a U.S. exchange.

The amendments to eliminate the availability of the limited U.S. GAAP reconciliation contained in Item 17 of Form 20-F could result in costs for the affected foreign private issuers because they will now need to collect this information and to prepare additional disclosure in their Form 20-F annual reports. Some commenters expressed concern about the potential compliance burdens associated with the amendment to eliminate the availability of the Item 17 reconciliation, especially because they believe that other countries are gradually requiring footnote disclosures comparable in scope to U.S. GAAP and Regulation S-X. However, based on our review of Form 20-F annual report filings made with us for fiscal year 2006, we estimate that most foreign private issuers already provide financial information according to Item 18 of Form 20-F. In addition, we believe that a reconciliation that includes the footnote disclosures required by U.S. GAAP and Regulation S-X can provide important additional information to investors. Some commenters also noted that foreign private issuers that provide the Item 17 reconciliation in their annual reports tend to be smaller companies, and that these companies would face significant burdens on their financial accounting and reporting system if they are required to provide the additional Item 18 disclosures and also comply with the accelerated due date for filing Form 20-F annual reports at the same time. To reduce the potential burdens on these issuers, we are providing a three-year transition period before the amendment takes effect, which will align the compliance date for the adopted amendments with the date on which many countries will be adopting IFRS.

The amendment to require segment data in U.S. GAAP financial statements could also result in costs for the affected foreign private issuers because of the need to collect this information and to prepare additional disclosure in their Form 20-F annual reports. However, we note that approximately five foreign private issuers will be affected by the requirement to provide segment data.

Foreign private issuers will also incur costs in connection with the amendment to require disclosure about any changes in and disagreements with the registrant's certifying accountant in Form 20-F annual reports and in Securities Act registration statements filed by registrants. In addition to the preparation costs of including this information in the Form 20-F, the foreign private issuer could also incur

certain costs associated with the requirement to obtain a letter from its former accountant stating whether it agrees with the disclosure provided by the issuer in the document filed with the Commission.

Investors may incur costs to the extent that the amendments to Form 20-F discourage foreign private issuers from registering or maintaining their registration with the Commission. If foreign private issuers deregister or do not register their securities under the Securities Act or the Exchange Act, there may be reduced opportunities for investment by U.S. investors in the securities of foreign issuers. Although each of the adopted amendments will affect a different number of foreign private issuers, for purposes of the Paperwork Reduction Act, we estimate that these new disclosures will result in an increased paperwork burden of 25 hours for all respondents and \$4,606,800 for Form 20-F.

C. Exchange Act Rule 13e-3

1. Expected Benefits

We believe that the amendment to Exchange Act Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations will benefit investors. By amending this Rule, the test for determining when a domestic issuer undertakes a going private transaction will also change. The amendment will help ensure that Rule 13e-3 covered the types of transactions that were intended when the Commission first adopted the Rule. Investors will benefit because more foreign private issuers are expected to be able to terminate their registration and reporting obligations under the Exchange Act as a result of these recently adopted amendments. If more foreign private issuers decide to conduct going private transactions to terminate their registration or reporting obligations, the amendment to Rule 13e-3 will require more foreign private issuers to comply with that Rule and to file a Schedule 13E-3, as required by that Rule. Similarly, modernizing Rule 13e-3 to apply equally to domestic issuers when a transaction identified in the Rule results in the issuer becoming eligible to terminate or suspend its reporting obligations is consistent with the policy purpose supporting the Rule's initial adoption. Investors will benefit from the additional disclosures that will be provided.

2. Expected Costs

Foreign private issuers and domestic issuers may incur additional costs in connection with the adopted amendment to Rule 13e-3(a)(3)(ii)(A) if Rule 13e-3 is more easily triggered because of the reference to the new termination of registration and reporting requirements that apply to foreign private issuers. These costs will include, for example, the cost of preparing, filing and disseminating a Schedule 13E-3, as well as any required amendments to that Schedule, with the Commission.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

When engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 2(b) of the Securities Act¹⁴⁸ and Section 3(f) of the Exchange Act¹⁴⁹ require us to consider whether the action will promote efficiency, competition and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act¹⁵⁰ requires us to consider the impact that any new rule will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, we considered the proposed amendments in light of the standards set forth in the above referenced statutory sections. We solicited comment on whether, if adopted, the proposed rule amendments would result in any anti-competitive effect or would promote efficiency, competition and capital formation. In addition, we encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that may result from adoption of the proposed amendments.

We did not receive any empirical data in this regard concerning the proposed amendments. However, with respect to our amendment to require more disclosure about payments made by depositaries in connection with ADR facilities, one commenter suggested that disclosure of the aggregate amount of incentive payments made by depositaries to foreign private issuers whose securities underlie the ADRs,

rather than disclosure about each payment, would avoid undermining competition among depositaries. We believe that information about the types of payments made by depositaries to issuers would be useful to investors because it would enable them to understand the purpose of the payments, and that the disclosure of that information on an aggregate basis would undercut the value of the disclosure. Accordingly, we continue to believe the new rules will contribute to efficiency, competition and capital formation.

The purpose of the amendments to Securities Act Rule 405 and Exchange Act Rule 3b-4, which will permit foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year, are expected to facilitate capital formation by foreign issuers in the U.S. capital markets. The adopted amendments should reduce regulatory compliance burdens for foreign private issuers that rely on the adopted amendments because of the reduction in monitoring costs. Reduced compliance burdens are expected to lower the cost of raising capital in the United States for those issuers. In addition, the competitiveness of the U.S. markets may be enhanced because the reduced monitoring costs may make the markets more attractive to them. The reduction in compliance burdens may also promote efficiency because foreign issuers will no longer need to continuously test their qualification as foreign private issuers.

The amendments to Form 20-F will accelerate the reporting deadline for annual reports on Form 20-F. The amendments to Exchange Act Rules 13a-10 and 15d-10, which pertain to transition reports filed on Form 20-F, and the amendments to Exchange Act Rule 15d-2, which pertain to special financial reports filed by foreign private issuers, will conform the due dates for these reports with the new due date for annual reports on Form 20-F. Several of the adopted amendments to Form 20-F will require more disclosure in the annual reports filed by foreign private issuers. The disclosures required will include information about any changes in and disagreements with the registrant's certifying accountant, ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADR, and information about corporate governance. In addition, the amendments will eliminate the availability of the limited U.S. GAAP reconciliation option contained in Item 17 of Form 20-F, and will eliminate an instruction to Item 17 of that Form,

which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements.

These amendments will create a more level playing field between foreign private issuers and U.S. issuers because they will require disclosures from foreign private issuers that are currently required of domestic issuers. Foreign private issuers that file annual reports on Form 20-F will also be required to provide these annual reports in a timeframe that is closer to the annual report due dates imposed on domestic issuers. As a result, the amendments should put foreign private issuers and domestic issuers in a more similar position with respect to their compliance obligations under the Commission's regulations, although the incremental costs of complying with these amendments may also create a disincentive for some foreign private issuers to enter the U.S. capital markets.

The amendments may also facilitate capital formation by foreign companies in the U.S. capital markets by enabling investors to obtain more information about these companies in a timeframe that will make the information useful to them and in a manner that will allow for greater comparability to domestic issuers. This could affect the allocation of capital between foreign private issuers and domestic issuers.

The amendments to Exchange Act Rule 13e-3, which reflect the newly adopted rules pertaining to the termination and deregistration of the reporting obligations of foreign private issuers, could require more foreign private issuers and domestic issuers to comply with that Rule and to file a Schedule 13E-3 as a result if more issuers decide to conduct going private transactions to terminate their registration and reporting obligations. This additional compliance obligation could create a disincentive for foreign private issuers to enter the U.S. markets.

VII. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,¹⁵¹ the Commission certified that the proposed amendments to Rule 405 of Regulation C, Form F-1, Form F-3, and Form F-4 under the Securities Act, and Form 20-F, Rule 3b-4, Rule 13a-10, Rule 13e-3 and Rule 15d-10 under the Exchange Act contained in this release, if adopted, will not have a significant economic impact on a substantial number of small entities. It included this certification in Part VIII of the Proposing Release. While the Commission encouraged written

¹⁴⁸ 15 U.S.C. 77b(b).

¹⁴⁹ 15 U.S.C. 78c(f).

¹⁵⁰ 15 U.S.C. 78w(a)(2).

¹⁵¹ 5 U.S.C. 605(b).

comments regarding this certification, no commenters responded to this request.

VIII. Statutory Authority and Text of Final Amendments

We are adopting amendments to the rules and forms pursuant to the authority set forth in Sections 6, 7, 10 and 19 of the Securities Act, as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act, as amended.

List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

■ For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

■ 2. Section 230.405 is amended by revising the definition of “foreign private issuer” to read as follows:

§ 230.405 Definition of terms.

* * * * *

Foreign private issuer. (1) The term *foreign private issuer* means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(2) In the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer shall be made as of a date within

30 days prior to the issuer’s filing of an initial registration statement under either the Act or the Securities Exchange Act of 1934.

(3) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer’s determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

■ 4. Form F-1 (referenced in § 239.31) Part I is amended by:

- a. Revising paragraph (c) of Item 4;
- b. Adding paragraph (d) to Item 4; and
- c. Revising the Instruction to Item 4A.

The revisions and addition read as follows:

Note: The text of Form F-1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM F-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

* * * * *

Item 4. Information with Respect to the Registrant and the Offering.

Furnish the following information with respect to the Registrant.

* * * * *

(c) For the registrant’s fiscal years ending before December 15, 2011, information required by Item 17 of Form 20-F may be furnished in lieu of the information specified by Item 18 thereof if the only securities being registered are non-convertible securities that are

“investment grade securities,” as defined below, or the only securities to be registered are to be offered:

1. upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or

2. pursuant to a dividend or interest reinvestment plan; or

3. upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

(d) For the registrant’s fiscal years ending on or after December 15, 2009, information required by Item 16F of Form 20-F.

* * * * *

Item 4A. Material Changes.

* * * * *

Instruction.

For the registrant’s fiscal years ending before December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or Item 18 of Form 20-F, whichever is applicable to the primary financial statements. For the registrant’s fiscal years ending on or after December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

■ 5. Form F-3 (referenced in § 239.33) is amended by:

- a. Revising General Instruction I.B.2.;
- b. Revising General Instruction I.B.3.;
- c. Revising General Instruction I.B.4.;
- and
- d. Revising the Instruction to Item 5.

The revisions read as follows:

Note: The text of Form F-3 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

FORM F-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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GENERAL INSTRUCTIONS

I. * * *

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B. Transaction Requirements

* * * * *

2. *Primary Offerings of Non-convertible Investment Grade Securities.* Non-convertible securities to be offered

for cash if such securities are "investment grade securities." A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. For the registrant's fiscal years ending before December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F. For the registrant's fiscal years ending on or after December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20-F.

3. *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F for a registrant's fiscal years ending before December 15, 2011; and for the registrant's fiscal years ending on or after December 15, 2011, the financial statements included in this registration statement must comply with Item 18 of Form 20-F. In addition, Form F-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20-F (§ 249.220f of this chapter).

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants.* Securities to be offered: (a) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued

by the issuer of the securities to be offered, or by an affiliate of such issuer. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F for the registrant's fiscal years ending before December 15, 2011; and for the registrant's fiscal years ending on or after December 15, 2011, the financial statements included in this registration statement must comply with Item 18 of Form 20-F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs B.1., B.2., and B.3. of this Instruction.

* * * * *

Item 5. Material Changes

* * * * *

Instructions.

1. For a registrant's fiscal years ending before December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or 18 of Form 20-F, whichever is applicable to the primary financial statements. For a registrant's fiscal years ending on or after December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

2. Material changes to be disclosed pursuant to Item 5(a) include changes in and disagreements with registrant's certifying accountant. For the registrant's fiscal years ending on or after December 15, 2009, disclosure pursuant to Item 16F of Form 20-F should be provided as of the date of the registration statement or prospectus.

* * * * *

■ 6. Form F-4 (referenced in § 239.34) is amended by:

- a. Revising Instruction 1 to Item 11;
- b. Revising Item 12(b)(2) introductory text;
- c. In Item 12(b)(3)(vi)(B), removing the period and adding in its place a semicolon;
- d. Revising Item 12(b)(3)(vii);
- e. In Item 12(b)(3)(viii), removing the period and adding in its place "; and" and adding Item 12(b)(3)(ix);
- f. Revising Instruction 1 to Item 13;
- g. Revising Item 14(h);
- h. In Item 14(i), removing the period and adding in its place "; and";
- i. Adding Item 14(j); and
- j. In Item 17(b)(5)(ii), removing the period and adding in its place "; and" and adding Item 17(b)(6).

The revisions and additions read as follows:

[**Note:** The text of Form F-4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM F-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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Item 11. Incorporation of Certain Information by Reference

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Instructions

1. For the registrant's fiscal years ending before December 15, 2011, all annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20-F, except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3. For the registrant's fiscal years ending on or after December 15, 2011, all annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20-F.

* * * * *

Item 12. Information With Respect to F-3 Registrants

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(b) * * *

(2) For the registrant's fiscal years ending before December 15, 2011, include financial statements and information as required by Item 18 of Form 20-F, except that financial statements of the registrant may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3. For the registrant's fiscal years ending on or after December 15, 2011, include financial statements and information as required by Item 18 of Form 20-F. In addition, provide:

(3) * * *

(vii) For the registrant's fiscal years ending before December 15, 2011, financial statements required by Item 18 of Form 20-F, except that financial statements of the registrant may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3, and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be

issued. (Schedules required under Regulation S–X shall be filed as “Financial Statement Schedules” pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form.) For the registrant’s fiscal years ending on or after December 15, 2011, financial statements required by Item 18 of Form 20–F, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(ix) For the registrant’s fiscal years ending on or after December 15, 2009, Item 16F of Form 20–F, change in registrant’s certifying accountant.

Item 13. Incorporation of Certain Information by Reference

Instructions

1. For the registrant’s fiscal years ending before December 15, 2011, all annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3. For the registrant’s fiscal years ending on or after December 15, 2011, all annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F.

Item 14. Information With Respect to Foreign Registrants Other Than F–3 Registrants

(h) For the registrant’s fiscal years ending before December 15, 2011, financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–1; and for the registrant’s fiscal years ending on or after December 15, 2011, financial statements required by Item 18 of Form 20–F. In addition, financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules

required by Regulation S–X shall be filed as “Financial Statement Schedules” pursuant to Item 21 of this Form.);

(j) For the registrant’s fiscal years ending on or after December 15, 2009, Item 16F of Form 20–F, change in registrant’s certifying accountant.

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies

(6) For the registrant’s fiscal years ending on or after December 15, 2009, Item 16F of Form 20–F, change in registrant’s certifying accountant.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

- 8. Section 240.3b–4 is amended by:
- a. Revising paragraph (c) introductory text;
- b. Adding paragraphs (d) and (e); and
- c. Removing the authority citations following the section.

The revision and addition read as follows:

§ 240.3b–4 Definition of “foreign government,” “foreign issuer” and “foreign private issuer”.

(c) The term *foreign private issuer* means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(d) Notwithstanding paragraph (c) of this section, in the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer will be made as of a date within 30 days prior to the issuer’s filing of an initial registration statement under either the Act or the Securities Act of 1933.

(e) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms

and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer’s determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

■ 9. Section 240.13a–10 is amended by revising paragraph (g)(3) to read as follows:

§ 240.13a–10 Transition reports.

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within the following period:

(i) Within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending before December 15, 2011; and

(ii) Within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending on or after December 15, 2011.

■ 10. Section 240.13e–3 is amended by revising paragraph (a)(3)(ii)(A) to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

(A) Causing any class of equity securities of the issuer which is subject to section 12(g) or section 15(d) of the Act to become eligible for termination of registration under Rule 12g–4 (§ 240.12g–4) or Rule 12h–6 (§ 240.12h–6), or causing the reporting obligations with respect to such class to become eligible for termination under Rule 12h–6 (§ 240.12h–6); or suspension under Rule 12h–3 (§ 240.12h–3) or section 15(d); or

■ 11. Section 240.15d-2 is amended by revising paragraph (a) and removing the authority citations following the section to read as follows:

§ 240.15d-2 Special financial report.

(a) If the registration statement under the Securities Act of 1933 did not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant shall, within 90 days after the effective date of the registration statement, file a special report furnishing certified financial statements for such last full fiscal year or other period, as the case may be, meeting the requirements of the form appropriate for annual reports of the registrant. If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed within the following period:

(1) By the later of 90 days after the date on which the registration statement became effective, or six months following the end of the registrant's full fiscal year, for fiscal years ending before December 15, 2011; and

(2) By the later of 90 days after the date on which the registration statement became effective, or four months following the end of the registrant's latest full fiscal year, for fiscal years ending on or after December 15, 2011.

■ 12. Section 240.15d-10 is amended by revising paragraph (g)(3) to read as follows:

§ 240.15d-10 Transition reports.

(g) (3) The report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within the following period:

(i) Within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending before December 15, 2011; and

(ii) Within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new

fiscal years ending on or after December 15, 2011.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 13. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

- 14. Form 20-F (referenced in § 249.220f) is amended by:
■ a. Revising General Instructions A.(b) and E.(c);
■ b. Revising Item 12.D introductory text, Item 12.D.3, and Instruction 1 to Item 12;
■ c. Revising Item 12.D to revise the phrase "American depository receipts" to read "American Depository Receipts" and adding Item 12.D.4;
■ d. Adding Item 16F and Instructions to Item 16F;
■ e. Adding Item 16G and an Instruction to Item 16G;
■ f. Revising Instruction 3 to Item 17; and
■ g. Revising Instruction 1 to Item 18.

The additions and revisions read as follows:

[Note: The text of Form 20-F does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM 20-F

GENERAL INSTRUCTIONS

A. Who May Use Form 20-F and When It Must Be Filed.

(b) A foreign private issuer must file its annual report on this Form within the following period:

(1) Within six months after the end of the fiscal year covered by the report for fiscal years ending before December 15, 2011; and

(2) Within four months after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2011.

E. Which Items to Respond to in Registration Statements and Annual Reports.

(c) Financial Statements.

(1) For an issuer's fiscal years ending before December 15, 2011, an Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related

information specified in Item 17 of this Form. We encourage you to provide the financial statements and related information specified in Item 18 of this Form in lieu of Item 17, but the Item 18 statements and information are not required. In certain circumstances, Forms F-1, F-3 or F-4 for the registration of securities under the Securities Act require that you provide the financial statements and related information specified in Item 18 in your annual report on Form 20-F. Consult those Securities Act forms for the specific requirements and consider the potential advantages of complying with Item 18 instead of Item 17 of this Form. Note that Items 17 and 18 may require you to file financial statements of other entities in certain circumstances. These circumstances are described in Regulation S-X.

(2) For the issuer's fiscal years ending on or after December 15, 2011, an Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 18 of this Form. Note that Items 17 and 18 may require you to file the financial statements of other entities in certain circumstances. These circumstances are described in Regulation S-X.

(3) The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. standards for auditor independence. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 551-3400.

Item 12. Description of Securities Other than Equity Securities.

D. American Depositary Shares. If you are registering securities represented by American Depositary Receipts in a sponsored facility, provide the following information.

3. Describe all fees and charges that a holder of American Depositary Receipts may have to pay, either directly or indirectly. Indicate the type of service, the amount of the fees or charges and to whom the fees or charges are paid. In particular, provide information about any fees or charges in connection with (a) depositing or substituting the underlying shares; (b) receiving or distributing dividends; (c) selling or exercising rights; (d) withdrawing an underlying security; (e) transferring, splitting or grouping receipts; and (f)

general depositary services, particularly those charged on an annual basis. Provide information about the depositary's right, if any, to collect fees and charges by offsetting them against dividends received and deposited securities.

4. In addition, describe all fees and other direct and indirect payments made by the depositary to the foreign issuer of the deposited securities.

Instructions to Item 12:

1. You do not need to provide the information called for by this Item if you are using the form as an annual report for your fiscal years ending before December 15, 2009. For your fiscal years ending on or after December 15, 2009, *except for Item 12.D.3. and Item 12.D.4., you do not need to provide the information called for by this Item if you are using this form as an annual report.*

* * * * *

Item 16F. Change in Registrant's Certifying Accountant.

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former

accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. Also:

(A) Describe each such disagreement;

(B) State whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and

(C) State whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefor.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v) (A) through (D) of this Item, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for re-election, or dismissal ("reportable events"). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) of this Item and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C)(1) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item 16F(a)(1)(iv), that if further investigated may:

(i) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that may prevent it from rendering an unqualified audit report on those financial statements); or

(ii) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements; and

(2) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D)(1) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements); and

(2) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant

(or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: The application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in Item 16F(a)(1)(iv) and the related instructions to this Item) or a reportable event (as described in Item 16F(a)(1)(v)), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the annual report requiring compliance with this Item 16F(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 16F(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 16F(a). The registrant shall file any such letter as an exhibit to the annual report containing the disclosure required by this Item.

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 16F(a). The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 16F(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the annual report or registration statement containing this disclosure. If the change in accountants occurred less than 30 days prior to the

filing of the annual report or registration statement and the former accountant's letter is unavailable at the time of the filing, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the annual report or registration statement. In either case, the former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming. If not filed with the annual report or registration statement containing the registrant's disclosure under this Item 16F(a), then the interim letter, if any, shall be filed by the registrant by amendment promptly.

(b) If: (1) In connection with a change in accountants subject to paragraph (a) of this Item 16F, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 16F:

1. Item 16F applies to all annual reports and registration statements filed on Form 20-F for the issuer's fiscal years ending on or after December 15, 2009.

2. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (§ 240.12b-2 of this chapter). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

3. The information required by paragraph (a) of this Item need not be provided for a company being acquired by the registrant in a transaction being registered on Form F-4 that is not subject to the filing requirements of either Section 13(a) or 15(d) of the Exchange Act.

4. The term "disagreements" as used in this Item shall be interpreted broadly to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term "disagreements" does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or his/her designee) will generally suffice as the accountant advising the registrant of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

6. The term "board of directors" as used in this Item 16F has the meaning set forth in § 240.10A-3(e)(2).

Item 16G. Corporate Governance

If the registrant's securities are listed on a national securities exchange, provide a concise summary of any significant ways in which its corporate governance practices differ from those followed by domestic companies under the listing standards of that exchange.

Instruction to Item 16G:

A registrant must provide the information required in Item 16G beginning with the annual report that its files for its first fiscal year ending on or after December 15, 2008. Item 16G only applies to annual reports, and not to registration statements on Form 20-F. Registrants should provide a brief and general discussion, rather than a detailed, item-by-item analysis.

Item 17. Financial Statements

* * * * *

Instructions:

* * * * *

3. For its fiscal years ending before December 15, 2009, if the registrant presents its financial statements according to generally accepted accounting principles in the United States except for SFAS No. 131 and if it furnishes the information relating to categories of activity required by Items 4.B.1. and 4.B.2. of this Form, then such

financial statements will be considered to comply with this Item, even if the auditor's report is qualified for noncompliance with SFAS No. 131. Such report and financial statements, however, must comply with all other applicable requirements.

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Item 18. Financial Statements

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Instruction to Item 18:

1. For fiscal years ending before December 15, 2009, all of the

instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply. For all fiscal years ending on or after December 15, 2009, all of the instructions to Item 17 also apply to this Item.

* * * * *

Dated: September 23, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc.E8-22760 Filed 10-3-08; 8:45 am]

BILLING CODE 8011-01-P



Federal Register

**Monday,
October 6, 2008**

Part III

**Department of
Housing and Urban
Development**

**Notice of Allocations, Application
Procedures, Regulatory Waivers Granted
to and Alternative Requirements for
Emergency Assistance for Redevelopment
of Abandoned and Foreclosed Homes
Grantees Under the Housing and
Economic Recovery Act, 2008; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5255-N-01]

**Notice of Allocations, Application
Procedures, Regulatory Waivers
Granted to and Alternative
Requirements for Emergency
Assistance for Redevelopment of
Abandoned and Foreclosed Homes
Grantees Under the Housing and
Economic Recovery Act, 2008**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocation method, waivers granted, alternative requirements applied, and statutory program requirements.

SUMMARY: This notice advises the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations granted to grantees under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes heading, referred to throughout this notice as the Neighborhood Stabilization Program (NSP). As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to specify alternative requirements and make regulatory waivers for this purpose. This notice also notes statutory issues affecting program design and implementation.

DATES: *Effective Date:* September 29, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. FAX inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

**Authority To Provide Alternative
Requirements and Grant Regulatory
Waivers**

Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA) (Pub. L. 110-289, approved July 30, 2008) appropriates \$3.92 billion for emergency assistance for redevelopment

of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). When referring to a provision of the appropriations statute itself, this notice will refer to HERA; when referring to the grants, grantees, assisted activities, and implementation rules, this notice will use the term NSP.

HERA authorizes the Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974, as amended, (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting the use of grant funds. (Current and former disaster recovery CDBG grantees should note that this authority is substantially and significantly more limited from that generally provided with disaster recovery CDBG supplemental appropriations; therefore, waivers under the NSP are much more limited. For example, HUD does not have authority to provide alternative requirements for the National Affordable Housing Act (NAHA) or for the Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970 (URA). Unless this notice describes how HERA has superseded one of their provisions, these statutes will apply as in the CDBG program. Such regulatory relief as HUD deemed necessary and was authorized to provide under 24 CFR 5.110 and 91.600 to permit implementation of the NSP is provided in this notice.)

The Secretary finds that the following alternative requirements are necessary to expedite the use of these funds for their required purposes.

Under the requirements of HERA, the Secretary must provide Congress written notice of its intent to exercise the authority to specify alternative requirements not less than 10 business days before such exercise of authority is to occur. Under the HUD Reform Act, regulatory waivers must be justified and published in the **Federal Register**. The Department is also using this notice to provide grantees information about other ways in which the requirements for this grant vary from regular CDBG program rules. Compiling this information in a single notice creates a helpful resource for grant administrators and HUD field staff.

Except as described in this notice, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states or, for CDBG entitlement communities, including those at 24 CFR part 570 subparts A, C, D, J, K, and O, as appropriate, shall apply to the use of these funds. (The State of Hawaii will be allocated funds and will be subject to part 570, subpart I, as modified by this notice.) Other sections of the notice will provide further details of the changes, the majority of which deal with adjustments necessitated by HERA provisions, simplifying program rules to expedite administration, or relate to the ability of state grantees to act directly instead of solely through distribution to local governments. In a separate guidance issuance, HUD also will provide a simplified "crosswalk" of NSP and State CDBG requirements for state grantee administrators.

Table of Contents

- I. Allocations
 - A. Formula: Allocation
 - B. Formula: Reallocation
- II. Alternative Requirements and Regulatory Waivers
 - A. Definitions for purposes of the CDBG Neighborhood Stabilization Program
 - B. Pre-Grant Process
 - 1. General
 - 2. Contents of an NSP Action Plan Substantial Amendment
 - 3. Continued Affordability
 - 4. Citizen Participation Alternative Requirement
 - 5. Joint Requests
 - 6. Effect of Existing Cooperation Agreements Governing Joint Programs and Urban Counties
 - C. Reimbursement for Pre-Award Costs
 - D. Grant Conditions
 - E. Income Eligibility Requirement Changes
 - F. State Distribution to Entitlement Communities and Indian Tribes
 - G. State's Direct Action
 - H. Eligibility and Allowable Costs
 - I. Rehabilitation Standards
 - J. Sale of Homes
 - K. Acquisition and Relocation
 - L. Note on Eminent Domain
 - M. Timeliness of Use and Expenditure of NSP Funds
 - N. Alternative Requirement for Program Income (Revenue) Generated by Activities Assisted With Grant Funds
 - O. Reporting
 - P. Note That FHA Properties Are Eligible for NSP Acquisition and Redevelopment
 - Q. Purchase Discount
 - R. Removal of Annual Requirements
 - S. Affirmatively Furthering Fair Housing
 - T. Certifications
 - U. Note on Statutory Limitation on Distribution of Funds
 - V. Information Collection Approval Note
 - W. Duration of Funding

I. Allocations

A. Formula: Allocation

HERA provides \$3.92 billion of funds that are generally to be construed as CDBG program funds for the communities and in the amounts listed in Attachment A to this notice. Attachment A also includes a description of the allocation formula used to determine the grant amounts, as required by HERA.

B. Formula: Reallocation

1.a. To expedite the use of NSP funds, the Department is specifying alternative requirements to 42 U.S.C. 5306(c). If a unit of general local government receiving an allocation of NSP funds under this notice (as designated in Attachment A) fails to submit a substantially complete application for its grant allocation by December 1, 2008, or submits an application for less than the total allocation amount, HUD will simultaneously notify the jurisdiction of the cancellation of all or part of its allocation amount and proceed to reallocate the funds to the state in which the jurisdiction is located.

b. If a state or insular area receiving an allocation of funds under this notice fails to submit a substantially complete application for its allocation by December 1, 2008, or submits an application for less than the total allocation amount, HUD will simultaneously notify the state or insular area of the reduction in its allocation amount and proceed to reallocate the funds to the 10 highest-need states based on original rankings of need.

2. If any jurisdiction, state, insular, or local area fails to meet the requirement to use its grant within 18 months of receipt of the amounts, as required, HUD, on the first business day after that deadline, will simultaneously notify the grantee and restrict the amount of unused funds in the grantee's line of credit. HUD will allow the grantee 30 days to submit information to HUD regarding any additional "use" of funds not already recorded in the Disaster Recovery Grant Reporting system (DRGR). Then HUD will proceed to recapture the unused funds. HUD will reallocate these unused funds in accordance with 42 U.S.C. 5306(c)(4).

II. Alternative Requirements and Regulatory Waivers

This section of the notice briefly provides a justification for alternative requirements, where additional explanation is necessary, and describes the necessary basis for each regulatory waiver. This section also highlights

some of the statutory items applicable to the grants. This background narrative is followed by the NSP requirement(s).

HUD's resources for implementing HERA are limited and have other calls upon them (for managing the regular CDBG and HOME Investment Partnership programs (HOME) and the New York, Gulf Coast, and Midwest disaster recovery grants), and the Department wants to target the use of its resources toward achieving NSP program performance, and preventing and eliminating fraud, waste, and misuse of program funds. Because no funds were available specifically for tracking the use of NSP grants, HUD is applying an existing system, unmodified. This all militates toward keeping standards simple or familiar, wherever possible. Therefore, throughout this notice, where HUD had any choice of a standard to use to measure compliance, HUD selected the simplest one to administer, giving a preference to a standard already in common use.

Each grantee eligible for an NSP grant already receives annual CDBG allocations, has carried out needs hearings, has a consolidated plan, an annual action plan, a citizen participation plan, a monitoring plan, an analysis of impediments to fair housing choice, and has made CDBG certifications. The consolidated plan already discusses housing needs related to up to four major grant programs: CDBG, HOME, Emergency Shelter Grants (ESG), and Housing Opportunities for Persons With AIDS (HOPWA). A grantee's annual action plan describes the activities budgeted under each of those annual programs.

HUD is treating a grantee's use of its NSP grant to be a substantial amendment to its current approved consolidated plan and annual action plan. The NSP grant is a special CDBG allocation to address the problem of abandoned and foreclosed homes. HERA establishes the need, targets the geographic areas, and limits the eligible uses of NSP funds. Treating the NSP as a substantial amendment will expedite the distribution of NSP funds, while ensuring citizen participation on the specific use of the funds. HUD is waiving the consolidated plan regulations on the certification of consistency with the consolidated plan to mean the NSP funds will be used to meet the congressionally identified needs of abandoned and foreclosed homes in the targeted areas set forth in the grantee's substantial amendment. In addition, HUD is waiving the consolidated plan regulations to the extent necessary to adjust reporting to

fit the requirements of HERA and the use of the DRGR.

The waivers, alternative requirements, and statutory changes apply only to the grant funds appropriated under HERA and not to the use of regular formula allocations of CDBG funds, even if they are used in conjunction with NSP funds for a project. They provide expedited program implementation and implement statutory requirements unique to this appropriation.

A. Definitions for Purposes of the CDBG Neighborhood Stabilization Program

Background

Certain terms are used in HERA that are not used in the regular CDBG program, or the terms are used differently in HERA and the HCD Act. In the interest of speed and clarity of administration, HUD is defining these terms in this notice for all grantees, including states. For the same reason, HUD is also defining eligible fund uses for all grantees, including states. States may define other program terms under the authority of 24 CFR 570.481(a), and will be given maximum feasible deference in accordance with 24 CFR 570.480(c) in matters related to the administration of their NSP programs.

Requirement

Abandoned. A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, AND the property has been vacant for at least 90 days.

Blighted structure. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

CDBG funds. CDBG funds means, in addition to the definition at 24 CFR 570.3, grant funds distributed under this notice.

Current market appraised value. The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer.

Foreclosed. A property "has been foreclosed upon" at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the

property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

Land bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP program, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

Revenue for the purposes of section 2301(d)(4). Revenue has the same meaning as program income, as defined at 24 CFR 570.500(a) with the modifications in this notice.

Subrecipient. Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization (including a unit of general local government) that a state awards funds to.

Use for the purposes of section 2301(c)(1). Funds are used when they are obligated by a state, unit of general local government, or any subrecipient thereof, for a specific NSP activity; for example, for acquisition of a specific property. Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.

B. Pre-Grant Process

Background

With this notice, HUD is establishing the NSP allocation formula, including reallocation provisions, and announcing the distribution of funds. CDBG grantees receiving NSP allocations may immediately begin to prepare and submit action plan substantial

amendments for NSP funds, in accordance with this notice. (Insular areas should follow the requirements for entitlement communities.)

To receive NSP funding, each CDBG grantee listed in Attachment A must submit an action plan substantial amendment to HUD in accordance with this notice by December 1, 2008.

HUD encourages each grantee to carry out its NSP activities in the context of a comprehensive plan for the community's vision of how it can make its neighborhoods not only more stable, but also more sustainable, competitive, and integrated into the overall metropolitan fabric, including access to transit, affordable housing, employers, and services.

HUD encourages each local jurisdiction receiving an allocation to carefully consider its administrative capacity to use the funds within the statutory deadline versus the capacity of the state administrator. HUD expects that after such consideration, some jurisdictions may choose to apply for less than the full amount, which will allow the balance of their grants to pass to the NSP administrator at the state level.

Another way jurisdictions may cooperate to carry out their grant programs is through a joint request to HUD. HUD is providing regulatory waivers and alternative requirements to allow joint requests among entitlement communities and to allow joint requests between an entitlement community and a state. Any two or more contiguous entitlement communities (metropolitan cities or urban counties) that are in the same metropolitan area and that are eligible to receive an NSP grant may instead make a joint request to HUD to implement a joint NSP program. A jurisdiction need not have a joint agreement with an urban county under the regular CDBG entitlement program to request a joint program for NSP funding. Similarly, any entitlement community eligible to receive an NSP grant may instead make a request for a joint NSP program with its state. An NSP joint request under a cooperation agreement results in a single combined grant and a single action plan substantial amendment. Potential requestors should contact HUD as soon as possible (as far as possible in advance of publishing a proposed NSP substantial amendment) for technical guidance. The requestors will specify which jurisdiction will receive the funds and administer the combined grant on behalf of the requestors; in the case of a joint request between a local government jurisdiction and a state, the state will administer the combined

grant. (Grantees choosing this option should consider the Consolidated Plan and citizen participation implications of this approach. The lead entity's substantial amendment will cover any participating members. The citizen participation process must include citizens of all jurisdictions participating in the joint NSP program, not just those of the lead entity.)

Given the rule of construction in HERA that NSP funds generally are construed as CDBG program funds, subject to CDBG program requirements, HUD generally is treating NSP funds as a special allocation of Fiscal Year (FY) 2008 CDBG funding. This has important consequences for local governments presently participating in an existing urban county program, and for metropolitan cities that have joint agreements with urban counties. HUD will consider any existing cooperation agreements between a local government and an urban county governing FY2008 CDBG funding (for purposes of either an urban county or a joint program) to automatically cover NSP funding as well. These cooperation agreements will continue to apply to the use of NSP funds for the duration of the NSP grant, just as cooperation agreements covering regular CDBG Entitlement program funds continue to apply to any use of the funds appropriated during the 3-year period covered by the agreements. For example, a local government presently has a cooperation agreement covering a joint program or participation in an urban county for federal FYs 2007, 2008 and 2009. The local government may choose to discontinue its participation with the county at the end of the applicable qualification period for purposes of regular CDBG entitlement funding. However, the county will still be responsible for any NSP projects funded in that community, and for any NSP funding the local government receives from the county, until those funds are expended and the funded activities are completed.

A third method of cooperating is also available. A jurisdiction may choose to apply for its entire grant, and then enter into a subrecipient agreement with another jurisdiction or nonprofit entity to administer the grant. In this manner, for example, all of the grantees operating in a single metropolitan area could designate the same land-bank entity (or the state housing finance agency) as a subrecipient for some or all of their NSP activities.

Each grantee will have until December 1, 2008, to complete and submit a substantial amendment to its annual action plan. A grantee that wishes to initially submit its action plan

amendment to HUD electronically in the DRGR system rather than via paper may do so by contacting its local field office for the DRGR submission directions. Paper submissions to HUD also will be allowed, although each grantee must set up its action plan in DRGR prior to the deadline for the first required performance report after receiving a grant.

HUD is using DRGR for the NSP because no other application and reporting system was sufficiently flexible to deal with the alternative requirements. The emergency nature of this legislation and corresponding statutory time frames do not give HUD sufficient time to develop a new system or modify an existing system to perfectly fit NSP.

HUD encourages grantees, during development of their action plan amendments, to contact HUD field offices for guidance in complying with these requirements, or if they have any questions regarding meeting grant requirements.

Normally, in the CDBG program, a grantee takes at least 30 days soliciting comment from its citizens before it submits an annual action plan to HUD, which then has 45 days to accept or reject the plan. To expedite the process and to ensure that the NSP grants are awarded in a timely manner, while preserving reasonable citizen participation, HUD is waiving the requirement that the grantee follow its citizen participation plan for this substantial amendment. HUD is shortening the minimum time for citizen comments and requiring the substantial amendment materials to be posted on the grantee's official website as the materials are developed, published, and submitted to HUD.

Each grantee must use its NSP funds within 18 months of receipt. A grantee will be deemed by HUD to have received its NSP grant at the time HUD signs its NSP grant agreement (or amendment thereof, in the case of a state that later receives reallocated grant funds).

Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about the programs. Among other things, this means that each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This will be a particular issue for those states that this notice is allowing to make grants throughout the state, including into regular CDBG entitlement areas. Because regular State

CDBG funds are not used in entitlement areas, State CDBG staffs may not be aware of limited English proficient (LEP) speaking populations in those metropolitan jurisdictions.

HUD will review each grantee submission for completeness and consistency with the requirements of this notice and will disapprove incomplete and inconsistent action plan amendments. HUD will allow revision and resubmission of a disapproved action plan in accordance with 24 CFR 91.500 so long as any such resubmission is received by HUD 45 days or less following the date of first disapproval and in no case later than the close of business February 13, 2009.

In combination, the notice alternative requirements provide the following expedited steps for NSP grants:

- Proposed action plan amendment published via the usual methods and on the Internet for no less than 15 calendar days of public comment;
- Final action plan amendment posted on the Internet and submitted to HUD by December 1, 2008 (grant application includes Standard Form 424 (SF-424) and certifications);
- HUD expedites review,
- HUD accepts the plan and prepares a cover letter, grant agreement, and grant conditions;
- Grant agreement signed by HUD and immediately transmitted to the grantee;
- Grantee signs and returns the grant agreements;
- HUD establishes the line of credit and the grantee requests and receives voice response system (VRS) access;
- After completing the environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receiving from HUD or the state an approved Request for Release of Funds and certification, the grantee may draw-down funds from the line of credit.

The action plan substantial amendment and citizen participation alternative requirement will permit an expedited grant-making process, but one that still provides for public notice, appraisal, examination, and comment on the activities proposed for the use of NSP grant funds.

Requirement

1. General note. Except as described in this notice, statutory and regulatory provisions governing the CDBG program for states and entitlement communities, as applicable, shall apply to the use of these funds.

2. Contents of an NSP Action Plan substantial amendment. The elements in the NSP substantial amendment to the

Annual Action Plan required for the CDBG program under part 91 are:

a. General information about needs, distribution, use of funds, and definitions:

i. Summary needs data identifying the geographic areas of greatest need in the grantee's jurisdiction. (A state must include the needs of the entire state and not just the areas not receiving an NSP allocation. To include the needs of an entitlement community, the state may either incorporate an entitlement jurisdiction's consolidated plan and NSP needs by reference and hyperlink on the Internet, or state the needs for that jurisdiction in the state's own plan);

ii. A narrative describing how the distribution and uses of the grantee's NSP funds will meet the requirements of Section 2301(c)(2) of HERA that funds be distributed to the areas of greatest need, including those with the greatest percentage of home foreclosures, with the highest percentage of homes financed by a subprime mortgage related loan, and identified by the grantee as likely to face a significant rise in the rate of home foreclosures. The grantee's narrative must address the three need categories in the NSP statute, but the grantee may also consider other need categories;

iii. For the purposes of the NSP, the narratives will include:

(A) A definition of "blighted structure" in the context of state or local law;

(B) A definition of "affordable rents;"

(C) A description of how the grantee will ensure continued affordability for NSP-assisted housing; and

(D) A description of housing rehabilitation standards that will apply to NSP-assisted activities.

b. Information by activity describing how the grantee will use the funds, identifying:

i. The eligible use of funds under NSP;

ii. The eligible CDBG activity or activities;

iii. The areas of greatest need addressed by the activity or activities;

iv. The expected benefit to income-qualified persons or households or areas;

v. Appropriate performance measures for the activity (e.g., units of housing to be acquired, rehabilitated, or demolished for the income levels represented in DRGR, which are currently 50 percent of area median income and below, 51 to 80 percent, and 81 to 120 percent);

vi. Amount of funds budgeted for the activity;

vii. The name and location of the entity that will carry out the activity; and

viii. The expected start and end dates of the activity.

c. A Description of the general terms under which assistance will be provided, including:

- i. If the activity includes acquisition of real property, the discount required for acquisition of foreclosed-upon properties;
- ii. Range of interest rates (if any);
- iii. Duration or term of assistance;
- iv. Tenure of beneficiaries (e.g., rental or homeownership); and
- v. If the activity produces housing, how the design of the activity will ensure continued affordability; and
- vi. If the funds used for the activity are to count toward the requirement at section 2301(f)(3)(A)(ii) to provide benefit to low-income persons (earning 50 percent or less of area median income).

d. Information on how to contact grantee program administrators, so that citizens and other interested parties know who to contact for additional information.

3. Continued affordability. Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed-upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of section 2301(f)(3)(A)(ii), remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

a. In its NSP action plan substantial amendment, a grantee will define "affordable rents" and the continued affordability standards and enforcement mechanisms that it will apply for each (or all) of its NSP activities. HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f), and 92.254 to be in minimal compliance with this standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration. (Note that HERA's continued affordability standard is longer than that required of subrecipients and participating units of general local government under 24 CFR 570.503 and 570.501(b).)

b. The grantee must require each NSP-assisted homebuyer to receive and complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. The grantee must ensure that the homebuyer obtains

a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (see, Statement on Subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration, available at <http://www.fdic.gov/regulations/laws/rules/5000-5160.html>). Grantees must design NSP programs to comply with this requirement and must document compliance in the records, for each homebuyer. Grantees are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate, including homebuyers who qualify for traditional mortgage loans.

c. If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR part 92, the grantee must revive the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice.

4. Citizen participation alternative requirement. HUD is providing an alternative requirement to 42 U.S.C. 5304(a)(2) and (3), to expedite distribution of grant funds and to provide for expedited citizen participation for the NSP substantial amendment. Provisions of 24 CFR 570.302 and 570.486 and those of 24 CFR 91.105(k) and 91.115(i), with respect to following the citizen participation plan, are waived to the extent necessary to allow implementation of the requirements below.

a. To receive its grant allocation, a grantee must submit to HUD for approval an NSP application by December 1, 2008. This submission will include a signed standard federal form SF-424, signed certifications, and a substantial action plan amendment meeting the requirements of paragraph b below. (24 CFR 91.505 is waived to the extent necessary to require submission of the substantial amendment to HUD for approval in accordance with this notice.)

b. Each grantee must prepare and submit its annual Action Plan amendment to HUD in accordance with the consolidated plan procedures for a substantial amendment under the annual CDBG program as modified by this notice or HUD will reallocate the

funds allocated for that grantee. HUD is providing alternative requirements to 42 U.S.C. 5304(a)(2) and waiving 91.105(k) and 91.115(i) to the extent necessary to allow the grantee to provide no fewer than 15 calendar days for citizen comment (rather than 30 days) for its initial NSP submission, and to require that, at the time of submission to HUD, each grantee post its approved action plan amendment and any subsequent NSP amendments on its official website along with a summary of citizen comments received within the 15-day comment period. After HUD processes and approves the plan amendment and both HUD and the grantee have signed the grant agreement, HUD will establish the grantee's line of credit in the amount of funds included in the Action Plan amendment, up to the allocation amount.

5. Joint requests. To expedite the use of funds, HUD is providing an alternative requirement to 42 U.S.C. 5304(i) and is waiving 24 CFR 570.308 to the extent necessary to allow for additional joint programs described below.

a. Entitlement Community Joint Agreements. Two or more contiguous entitlement communities (metropolitan cities or urban counties) that are eligible to receive a NSP allocation and are located in the same metropolitan area may enter into joint agreements. All members to the joint agreement must be eligible to receive NSP funds, and one unit of general local government must be designated as the lead entity. The lead entity must execute the NSP grant agreement with HUD. Consistent with 24 CFR 570.308, the lead entity must assume responsibility for administering the NSP grant on behalf of all members, in compliance with applicable program requirements. The substantial amendment to the lead entity's action plan will include all participating entitlement communities.

b. Joint agreements with a state. Any entitlement community that is eligible to receive an NSP allocation may enter into a joint agreement with its state. The state shall be the lead entity and must assume responsibility for administering the NSP grant on behalf of the entitlement community, in compliance with applicable program requirements. The substantial amendment to the state's action plan will include any participating entitlement community.

6. Effect of existing cooperation agreements governing joint programs and urban counties. Any cooperation agreement between a unit of general local government and a county, concerning either a joint program or participation in an urban county under

24 CFR 570.307 or 570.308, and governing CDBG funds appropriated for federal FY 2008, will be considered to incorporate and apply to NSP funding. Any such cooperation agreements will continue to apply to the use of NSP funds until the NSP funds are expended and the NSP grant is closed out. Grantees should note that certain provisions in existing cooperation agreements that govern FY2008 CDBG funding may be inconsistent with parts of HERA and this notice. For instance, set minimum and/or maximum allocation amounts may conflict with priority distributions to areas of greatest need identified in the grantee's action plan substantial amendment. Conforming amendments should be made to existing cooperation agreements, as necessary, to comply with HERA and this notice.

C. Reimbursement for Pre-Award Costs

Background

NSP allocatees will need to move forward rapidly to prepare the NSP substantial amendment and to undertake other administrative actions, including environmental reviews, as soon as allocations are known. Therefore, HUD is granting permission to states and entitlement jurisdictions receiving a direct allocation of NSP funds (see Attachment A) to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds.

Requirement

24 CFR 570.200(h) is waived to the extent necessary to grant permission to entitlement jurisdictions receiving a direct NSP allocation under this notice to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. Similarly, in accordance with OMB Circular A-87, Attachment B, paragraph 31, HUD is allowing states to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. As a new grantee, an NSP allocatee will be allowed to incur costs necessary to develop the NSP substantial action plan amendment and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in the final plan, provided that the other conditions of 24 CFR 570.200(h) are met. (For units of general local government (including entitlements not receiving a direct NSP allocation under this notice) applying to the state, 24 CFR 570.489(b) applies unmodified.)

D. Grant Conditions

For NSP grantees that HUD determines are high risk in accordance with 24 CFR 85.12(a), HUD will apply additional grant conditions in accordance with 24 CFR 85.12(b).

E. Income Eligibility Requirement Changes

Background

The NSP program includes two low- and moderate-income requirements at section 2301(f)(3)(A) that supersede existing CDBG income qualification requirements. Under the heading "Low and Moderate Income Requirement," HERA states that: "All of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income."

This provision does two main things. First, for the purposes of the NSP, it effectively supersedes the overall benefit provisions of the HCD Act and the CDBG regulations, which allow up to 30 percent of a grant to be used for activities that meet a national objective other than the low- and moderate-income one. Thus, NSP allows the use of only the low- and moderate-income national objective. Activities may not qualify under NSP using the "prevent or eliminate slums and blight" or "address urgent community development needs" objectives.

Second, this provision also redefines and supersedes the definition of "low- and moderate-income," effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of area median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program. To prevent confusion, HUD will refer to this new income group as "middle income," and keep the regular CDBG definitions of "low-income" and "moderate income" in use. Further, HUD will characterize aggregated households whose incomes do not exceed 120 percent of median income as "low-, moderate-, and middle-income households," abbreviated as LMMH. For the purposes of NSP CDBG only, an activity may meet the HERA low- and moderate-income national objective if the assisted activity:

- Provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income (abbreviated as LMMH);
- Serves an area in which at least 51 percent of the residents have incomes at

or below 120 percent of area median income (LMMH);

- Creates or retains jobs for persons whose household incomes are at or below 120 percent of median income (LMMI); or
- Serves a limited clientele whose incomes are at or below 120 percent of area median income (LMMC).

HUD will use the parenthetical terms above to refer to NSP national objectives in program implementation, to avoid confusion with the regular HCD Act definitions.

Land banks are not allowed in the regular CDBG program because of the very high risk that the delay between acquiring property and meeting a national objective can be excessively long, attenuating the intended CDBG program benefits by delaying benefit far beyond the annual or even the 5-year consolidated plan cycles. In the regular CDBG program (and in the NSP other than in an eligible land-bank use), a property acquisition activity is dependent on the national objective met by the subsequent reuse of the property in order to demonstrate program compliance. Given this, the HERA direction that assistance to land banks is an eligible use of NSP funds requires an alternative requirement and policy clarification.

For grantees choosing to assist land banks or demolition of structures with NSP funds, the change to the income qualification level for low-, moderate-, and middle-income areas will likely include most of the neighborhoods where property stabilization is required. If an assisted land bank is not merely acquiring properties, but is also carrying out other activities intended to arrest neighborhood decline, such as maintenance, demolition, and facilitating redevelopment of the properties, HUD will, for NSP-assisted activities only, accept that the acquisition and management activities of the land bank may provide sufficient benefit to an area generally (as described in 24 CFR 570.208(a)(1) and 570.483(b)(1)) to meet a national objective (LMMH) prior to final disposition of the banked property. HUD notes that the grantee must determine the actual service area benefiting from a land bank's activities, in accordance with the regulations.

However, HUD does not believe the benefits of just holding property are sufficient to stabilize most neighborhoods or that this is the best use of limited NSP funds absent a re-use plan. Therefore, HUD is requiring that a land bank may not hold a property for more than 10 years without obligating the property for a specific, eligible

redevelopment of that property in accordance with NSP requirements.

Note that if a state provides funds to an entitlement community, the entitlement community must apply the area median income levels applicable to its regular CDBG program geography and not the "balance of state" levels.

Other than the change in the applicable low- and moderate-income qualification level from 80 percent to 120 percent, the area benefit, housing, jobs, and limited clientele benefit requirements at 570.208(a) and 570.483(b) remain unchanged, as does the required documentation.

The other NSP low- and moderate-income related provision states that: "not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income."

HUD advises grantees to take note of this new threshold as they design NSP activities. This provision does not have a parallel in the regular CDBG program. Grantees must document that an amount equal to at least 25 percent of a grantee's NSP grant (initial allocation plus any reallocations) has been budgeted in the initial approved action plan substantial amendment for activities that will provide housing for income-qualified individuals or families. Prior to and at grant closeout, HUD will review grantees for compliance with this provision by determining whether at least 25 percent of grant funds have been expended for housing for individual households whose incomes do not exceed 50 percent of area median income.

Requirements

1. Overall benefit supersession and alternative requirement. The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484 (for states), and 24 CFR 570.200(a)(3) that 70 percent of funds are for activities that benefit low- and moderate-income persons are superseded and replaced by section 2301(f)(3)(A) of HERA. One hundred percent of NSP funds must be used to benefit individuals and households whose income does not exceed 120 percent of area median income. NSP shall refer to such households as "low-, moderate-, and middle-income."

2. National objectives supersession and alternative requirements. The requirements at 42 U.S.C 5301(c) are

superseded and 24 CFR 570.208(a) and 570.483 are waived to the extent necessary to allow the following alternative requirements:

a. For purposes of NSP only, the term "low- and moderate-income person" as it appears throughout the CDBG regulations at 24 CFR part 570 shall be defined as a member of a low-, moderate-, and middle-income household, and the term "low- and moderate-income household" as it appears throughout the CDBG regulations shall be defined as a household having an income equal to or less than 120 percent of area median income, measured as 2.4 times the current Section 8 income limit for households below 50 percent of median income, adjusted for family size. A state choosing to carry out an activity directly must apply the requirements of 24 CFR 570.208(a) to determine whether the activity has met the low-, moderate-, and middle-income (LMMI) national objective and must maintain the documentation required at 24 CFR 570.506 to demonstrate compliance to HUD.

b. The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) are not applicable to NSP-assisted activities.

c. Each grantee whose plan includes assisting rental housing shall develop and make public its definition of affordable rents for NSP-assisted rental projects.

d. An NSP-assisted property may not be held in a land bank for more than 10 years without obligating the property for a specific, eligible redevelopment of that property in accordance with NSP requirements.

F. State Distribution to Entitlement Communities and Indian Tribes

Background

This notice includes an alternative requirement to the HCD Act and a regulatory waiver allowing distribution of funds by a state to CDBG regular entitlement communities and Tribes. This is consistent with the provision of HERA that specifically sets distribution priorities for areas with the greatest need, including "metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas * * *". Therefore, states receiving allocations under this notice may distribute funds to or within any jurisdiction within the state that is among those with the greatest need, even if the jurisdiction is among those

receiving a direct formula allocation of funds from HUD under the regular CDBG program or this notice.

Requirement

Alternative requirement for distribution to CDBG metropolitan cities, urban counties, and Tribes. In accordance with the direction of HERA that grantees distribute funds to the areas of greatest need, HUD is providing an alternative requirement to 42 U.S.C. 5302(a)(7) (definition of "nonentitlement area") and waiving provisions of 24 CFR part 570, including 24 CFR 570.480(a), that would prohibit states electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities or to Tribes. The appropriations law supersedes the statutory distribution prohibition at 42 U.S.C. 5306(d)(1) and (2)(A). Alternatively, the state is required to distribute funds without regard to a local government status under any other CDBG program and must use funds in entitlement jurisdictions if they are identified as areas of greatest need, regardless of whether the entitlement receives its own NSP allocation.

G. State's Direct Action

Background

In the State CDBG program, states receiving CDBG funds may not directly use the funds for activities, but must distribute them to units of general local government, which then use the funds for program activities. States may still use this "method of distribution" program model under NSP, but HUD reminds the states of the 18-month "use" requirement. HUD also notes the language of section 2301(c) that says, in part, that:

Any State * * * that receives amounts pursuant to this section shall * * * use such amounts to purchase and redevelop * * *.

This clearly speaks to the states using funds directly for projects and supersedes the HCD Act direction for states to only distribute funds to nonentitlement areas. Direct use of funds by a state may also result in more expeditious use of NSP funds. Therefore, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities, just as CDBG entitlement communities do under 24 CFR 570.200(f), including, but not limited to, carrying out activities using its own employees, procuring contractors, private developers, and providing loans and grants through nonprofit subrecipients (including local governments and other public

nonprofits such as regional or local planning or development authorities and public housing authorities).

For those activities a state chooses to carry out directly, HUD strongly advises the state to adopt the recordkeeping required for an entitlement community at 570.506 and the subrecipient agreement provisions at 570.503. Also, in such cases, as an alternative requirement to 42 U.S.C. 5304(i), the state may retain and re-use program income as if it were an entitlement community.

HUD is granting regulatory waivers of State CDBG regulations to conform the applicable management, real property change of use, and recordkeeping rules when a state chooses to carry out activities as if it were an entitlement community.

Requirements

1. Responsibility for state review and handling of noncompliance. This change conforms NSP requirements with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, as modified by this notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

2. Change of use of real property for state grantees acting directly. This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

3. Recordkeeping for a state grantee acting directly. Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: State records. The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of NSP funds under 24 CFR 570.493. Consistent with applicable

statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the state; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

4. State compliance with certifications for state grantees acting directly. This is a conforming change related to the waiver to allow a state to act directly. Because a state grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications, so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements.

5. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a state grantee to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

H. Eligibility and Allowable Costs

Background

Most of the activities eligible under NSP represent a subset of the eligible activities under 42 U.S.C. 5305(a). Due to limitations in the reporting system, DRGR, the NSP-eligible uses must be correlated with CDBG-eligible activities. The alternative to this approach, using a paper-based action plan and reporting process using NSP-eligible uses only would be much slower to implement. This correlation also reduces implementation risks, because it will ensure that the NSP grants are administered largely in accordance with

long-established CDBG rules and controls. The table in the requirements paragraph below shows the eligible uses under NSP and the corresponding eligible activities from the regulations for the regular CDBG entitlement program that HUD has determined best correspond to those uses. If a grantee creates a program design that includes a CDBG-eligible activity that is not shown in the table to support an NSP-eligible use, the Department is providing an alternative requirement to 42 U.S.C. 5305(a) that HUD may allow a grantee an additional eligible-activity category if HUD finds the activity to be in compliance with the NSP statute. As under the regular CDBG program, grantees may fund costs, such as reasonable developer's fees, related to NSP-assisted housing rehabilitation or construction activities. NSP funds may be used to redevelop acquired property for nonresidential uses, such as a public park, commercial use, or mixed residential and commercial use.

The annual entitlement CDBG program allows up to 20 percent of any grant amount plus program income may be used for general administration and planning costs. The State CDBG program is also subject to the 20 percent limitation, but within that cap up to 3 percent may be used by the state for state administrative cost and technical assistance to potential local government program grant recipients, with the remainder available to be granted to local government recipients for their administrative costs. Because some of the costs usually allocated under these caps are not applicable to NSP grants (for example, the costs of completing the entire consolidated plan process), these amounts seem excessive to HUD in the context of the NSP program. On the other hand, HUD wants to encourage and support expeditious, appropriate, and compliant use of grant funds, and to prevent fraud, waste, and abuse of funds. Therefore, HUD is providing an alternative requirement that an amount of up to 10 percent of an NSP grant provided to a jurisdiction and of up to 10 percent of program income earned may be used for general administration and planning activities as those are defined at 24 CFR 570.205 and 206. For all grantees, including states, the 10 percent limitation applies to the grant as a whole.

The regulatory and statutory requirements for state match for program administration at 24 CFR 570.489 (a)(i) are superseded by the statutory direction at section 2301(e)(2) that no matching funds shall be required for a state or unit of general local government to receive a grant.

Requirements

1. Use of grant funds must constitute an eligible use under HERA.
2. In addition to being an eligible NSP use of funds, each activity funded under this notice must also be CDBG-eligible under 42 U.S.C. 5305(a) and meet a CDBG national objective.

3.a. Certain CDBG-eligible activities correlate to specific NSP-eligible uses and vice versa. 42 U.S.C. 5305(a) and 24 CFR 570.201–207 and 482(a) through (d) are superseded to the extent necessary to allow the eligible uses described under section 2301(c)(3) of HERA in accordance with this paragraph (including the table and subparagraphs

below) or with permission granted, in writing, by HUD upon a written request by the grantee that demonstrates that the proposed activity constitutes an eligible use under NSP. All NSP grantees, including states, will use the NSP categories and CDBG entitlement regulations listed below.

NSP-eligible uses	Correlated eligible activities from the CDBG entitlement regulations
(A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers.	<ul style="list-style-type: none"> • As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. • Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.
(B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition (b) Disposition, (i) Relocation, and (n) Direct homeownership assistance (as modified below); • 570.202 eligible rehabilitation and preservation activities for homes and other residential properties (HUD notes that rehabilitation may include counseling for those seeking to take part in the activity).
(C) Establish land banks for homes that have been foreclosed upon	24 CFR 570.201(a) Acquisition and (b) Disposition.
(D) Demolish blighted structures	<ul style="list-style-type: none"> • 24 CFR 570.201(d) Clearance for blighted structures only.
(E) Redevelop demolished or vacant properties	<ul style="list-style-type: none"> • 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below). • 204 Community based development organizations.

b. HUD will not consider requests to allow foreclosure prevention activities, or to allow demolition of structures that are not blighted, or to allow purchase of residential properties and homes that have not been abandoned or foreclosed upon as provided in HERA and defined in this notice. HUD does not have the authority to permit uses or activities not authorized by HERA.

c. New construction of housing is eligible as part of eligible-use (E) to redevelop demolished or vacant properties.

d. 24 CFR 570.201(n) is waived and an alternative requirement provided for 42 U.S.C. 5305(a) to the extent necessary to allow provision of NSP-assisted homeownership assistance to persons whose income does not exceed 120 percent of median income.

4. Alternative requirement for the limitation on planning and administrative costs. 24 CFR 570.200(g) and 570.489(a)(3) are waived to the extent necessary to allow each grantee under this notice to expend no more than 10 percent of its grant amount, plus 10 percent of the amount of program income received by the grantee, for activities eligible under 24 CFR 570.205 or 206. The requirements at 24 CFR 570.489 are waived to the extent that they require a state match for general administrative costs. (States may use

NSP funds under this 10 percent limitation to provide technical assistance to local governments and nonprofit program participants.)

I. Rehabilitation Standards

Background

HERA provides that any NSP-assisted rehabilitation of a foreclosed-upon home or residential property shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. This imposes a requirement that does not exist in the CDBG program. This means that each grantee must describe or reference in its NSP action plan amendment what rehabilitation standards it will apply for NSP-assisted rehabilitation. HUD will monitor to ensure the standards are implemented.

HERA defines rehabilitation to include improvements to increase the energy efficiency or conservation of such homes and properties or to provide a renewable energy source or sources for such homes and properties. Such improvements are also eligible under the regular CDBG program. HUD strongly encourages grantees to use NSP funds not only to stabilize

neighborhoods in the short-term, but to strategically incorporate modern, green building and energy-efficiency improvements in all NSP activities to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

J. Sale of Homes

Background

Section 2301(d)(2) of HERA directs that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. (Sales and closing costs are eligible NSP redevelopment or rehabilitation costs.) Note that the maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally may include, among other items, costs related to the sale of the property).

Requirements

1. In its records, each grantee must maintain sufficient documentation

about the purchase and sale amounts of each property and the sources and uses of funds for each activity so that HUD can determine whether the grantee is in compliance with this requirement. A grantee will be expected to provide this documentation individually for each activity.

2. In determining the sales price limitation, HUD will not consider the costs of boarding up, lawn mowing, simply maintaining the property in a static condition, or, in the absence of NSP-assisted rehabilitation or redevelopment of the property, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs. These costs may not be included by the grantee in the determination of the sales price for an NSP-assisted property.

3. For reporting purposes only, for a housing program involving multiple single-family structures under the management of a single entity, HUD will permit reporting the aggregation of activity delivery costs across the total portfolio of projects until completion of the program or closeout of the grant with HUD, whichever comes earlier.

K. Acquisition and Relocation

Background

Acquisition of Foreclosed-Upon Properties. HUD notes that section 2301(d)(1) of HERA conflicts with section 301(3) of the URA (42 U.S.C. 4651) and related regulatory requirements at 49 CFR 24.102(d). As discussed further, section 2301(d)(1) of HERA requires that any acquisition of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property and that such discount shall ensure that purchasers are paying below-market value for the home or property. Section 301(3) of the URA, as implemented at 49 CFR 24.102(d), provides that an offer of just compensation shall not be less than the agency's approved appraisal of the fair market value of such property. These URA acquisition policies apply to any acquisition of real property for a federally funded project, except for acquisitions described in 49 CFR 24.101(b)(1) through (5) (commonly referred to as "voluntary acquisitions"). As the more recent and specific statutory provision, section 2301(d)(1) of HERA prevails over section 301 of the URA for purposes of NSP-assisted acquisitions of foreclosed-upon homes or residential properties.

NSP Appraisal Requirements. As noted above, section 301 of the URA does not apply to voluntary

acquisitions. While the URA and its regulations do not require appraisals for such acquisitions, the URA acquisition policies do not prohibit acquiring agencies from obtaining appraisals. Appendix A, 49 CFR 24.101(b)(2) acknowledges that acquiring agencies may still obtain an appraisal to support their determination of fair market value. Section 2301(d)(1) of HERA requires an appraisal for purposes of determining the statutory purchase discount. This appraisal requirement applies to any NSP-assisted acquisition of a foreclosed-upon home or residential property (including voluntary acquisitions).

One-for-One Replacement. HUD is providing an alternative requirement to the one-for-one replacement requirements set forth in 42 U.S.C. 5304(d)(2), as implemented at 24 CFR 42.375. The Department anticipates a large number of requests from grantees for whom the requirements will be onerous given the pressing rush to implement NSP, and several of the major housing markets affected by the foreclosure crisis have a surplus of abandoned and foreclosed-upon residential properties. The additional workload of reviewing requests under 42 U.S.C. 5304(d)(3) and 24 CFR 42.375(d) could cause a substantial backlog at HUD and delay NSP program operations. Therefore, the alternative requirement is that an NSP grantee will not be required to meet the requirements of 42 U.S.C. 5304(d), as implemented at 24 CFR 42.375, to provide one-for-one replacement of low- and moderate-income dwelling units demolished or converted in connection with activities assisted with NSP funds. Alternatively, each grantee must submit the information described below relating to its demolition and conversion activities in its action plan substantial amendment. The grantee will report to HUD and citizens (via prominent posting of the DRGR reports on the grantee's official Internet site) on progress related to these measures until the closeout of its grant with HUD.

As noted earlier, HUD does not have the authority to waive or specify alternative requirements to the URA's acquisition policies or relocation provisions. Those requirements that do not conflict with HERA continue to apply. HUD is *not* specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d). Guidance on meeting these requirements is available on the HUD Web site and through local HUD field offices. HUD urges grantees to consider URA requirements in designing their programs and to remember that there are URA obligations related to voluntary

and involuntary property acquisition activities, even for vacant and abandoned property. HUD reminds grantees to be aware of the requirement to have and follow a residential antidisplacement and relocation plan for the CDBG and HOME programs. This requirement is not waived for those programs and continues to apply to activities assisted with regular CDBG and HOME funds.

Requirements

1. The one-for-one replacement requirements at 24 CFR 570.488, 570.606(c), and 42.375 are waived for low- and moderate-income dwelling units demolished or converted in connection with an activity assisted with NSP funds. As an alternative requirement to 42 U.S.C. 5304(d)(2)(A)(i) and (ii), each grantee planning to demolish or convert any low- and moderate-income dwelling units as a result of NSP-assisted activities must identify all of the following information in its NSP substantial amendment:

- (a) The number of low- and moderate-income dwelling units reasonably expected to be demolished or converted as a direct result of NSP-assisted activities;
- (b) The number of NSP affordable housing units (made available to low-, moderate-, and middle-income households) reasonably expected to be produced, by activity and income level as provided for in DRGR, by each NSP activity providing such housing (including a proposed time schedule for commencement and completion); and
- (c) The number of dwelling units reasonably expected to be made available for households whose income does not exceed 50 percent of area median income.

The grantee must also report on actual performance for demolitions and production, as required elsewhere in this notice.

L. Note on Eminent Domain

Although section 2303 of HERA appears to allow some use of eminent domain for public purposes, HUD cautions grantees that section 2301(d)(1) may effectively ensure that all NSP-assisted property acquisitions must be voluntary acquisitions as the term is defined by the URA and its implementing regulations. Section 2301(d)(1) directs that any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market appraised value of the home or property and that such discount shall ensure that purchasers are paying below-market value for the home or property. However, the Fifth Amendment to the U.S. Constitution provides that private property shall not be taken for public use without just

compensation. The Supreme Court has ruled that a jurisdiction must pay fair market value for the purchase of property through eminent domain. A grantee contemplating using NSP funds to assist an acquisition involving an eminent domain action is advised to consult appropriate legal counsel before taking action.

M. Timeliness of Use and Expenditure of NSP Funds

Background

One of the most critical NSP provisions is the HERA requirement at section 2301(c)(1) that any grantee receiving a grant:

* * * shall, not later than 18 months after the receipt of such amounts, use such amounts to purchase and redevelop abandoned and foreclosed homes and residential properties.

HUD has defined the term "use" in this notice to include obligation of funds.

A further complication is that HERA clearly expects grantees to earn program income under this grant program. As provided under 24 CFR 85.21 for entitlements, grantees and subrecipients shall disburse program income before requesting additional cash withdrawals from the U.S. Treasury. States are governed similarly by 24 CFR 489(e)(3) and 31 CFR part 205. This requirement is reflected in the regulations governing use of program income by States and units of general local government under the CDBG program. This means that a grantee that successfully and quickly deploys its program and generates program income may obligate, draw down, and expend an amount equal to its NSP allocation amount, and still have funds remaining in its line of credit, possibly subject to recapture at the 18-month deadline.

On consideration, the Department chose to implement the use test based on whether the state or unit of general local government has expended or obligated the NSP grant funds and program income in an aggregate amount at least equal to the NSP allocation.

HUD is also imposing a deadline for expending NSP grant funds because the intent of these grants clearly is to quickly address an emergency situation in areas of the greatest need.

Requirements

1. Timely use of NSP funds. At the end of the statutory 18-month use period, which begins when the NSP grantee receives its funds from HUD, the state or unit of general local government NSP grantee's accounting records and DRGR information must reflect outlays

(expenditures) and unliquidated obligations for approved activities that, in the aggregate, are at least equal to the NSP allocation. (The DRGR system collects information on expenditures and obligations.)

2. Timely expenditure of NSP funds. The timely distribution or expenditure requirements of sections 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: All NSP grantees must expend on eligible NSP activities an amount equal to or greater than the initial allocation of NSP funds within 4 years of receipt of those funds or HUD will recapture and reallocate the amount of funds not expended.

N. Alternative Requirement for Program Income (Revenue) Generated by Activities Assisted With Grant Funds

Requirement

Revenue received by a state, unit of general local government, or subrecipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of CDBG funds (which term includes NSP grant funds) constitutes CDBG program income. To ensure consistency of treatment of such revenue, the definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by states, units of general local government, and subrecipients. However, Section 2301(d)(4) imposes certain limitations and requirements that necessitate an alternative requirement to govern the use of program income generated by activities carried out pursuant to Section 2301(c). The limitations and requirements are based on the NSP activity that generated the program income and on the date the income is received. In addition, Section 2301(d)(4) requires any revenue from the sale, rental, redevelopment, rehabilitation or any other eligible use of NSP funds to be provided to and used by the state or unit of local general government. This includes revenue received by a private individual or other entity that is not a subrecipient.

1. Program income generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E).

a. Program income received before July 30, 2013, may be retained by the state or unit of general local government if it is treated as additional CDBG funds and used in accordance with the requirements of Section 2301.

b. Program income received on or after July 30, 2013—Return to the Treasury.

Any program income received by a state, unit of general local government,

or subrecipient on or after July 30, 2013, that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) (e.g., proceeds from the sale of rental housing by a state, unit of general local government, or subrecipient) and is not authorized to be retained as described below must be remitted to HUD for deposit in the Treasury. Any program income received by a state, unit of general local government, or subrecipient on or after July 30, 2013, that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) and that is in excess of the cost to acquire and redevelop or rehabilitate an abandoned or foreclosed-upon home or residential property may be retained if HUD approves a request to use the funds for other NSP purposes. Note that no profit can be earned on the sale of an abandoned or foreclosed-upon home or residential property to an individual as a primary residence; as provided under Section 2301(c)(3), the sale must be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate the home or property up to a decent, safe, and habitable condition.

Example: A unit of general local government acquires a foreclosed-upon multi-family residential property for \$100,000, spends \$100,000 to redevelop the property, and sells the property for \$225,000. If the sale occurs on or after July 30, 2013, the amount to be remitted to HUD by the state or unit of general government is \$200,000 if HUD authorizes the profit of \$25,000 to be used for other NSP purposes, or \$225,000 if HUD does not authorize such use.

c. Revenue received by a private individual or other entity that is not a subrecipient.

i. Any revenue generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) that is in excess of the cost to acquire and redevelop (including reasonable development fees) or rehabilitate an abandoned or foreclosed-upon home or residential property must be provided to the state or unit of general local government and treated as program income. The disposition of the program income by the state or unit of general local government is governed by a. and b. above.

ii. Any revenue that is generated by activities carried out pursuant to Section 2301(c)(3)(B) and (E) and is received on or after July 30, 2013, shall be provided to the State or unit of general local government and treated as program income. The disposition of the program income by the state or unit of general local government is governed by b. above.

Example: A unit of general local government uses NSP funds to make a loan (or grant) to a developer to finance the acquisition and rehabilitation of a foreclosed-upon multi-family residential property. The developer uses \$200,000 in NSP funds (loan or grant) from the unit of general local government to pay the total costs of acquisition and rehabilitation (including reasonable development fees) and subsequently sells the property for \$225,000. The developer is required to provide \$225,000 to the unit of general local government. (If the NSP funding was a loan, the sale proceeds would be used to repay the NSP loan.) If the sale occurs on or after July 30, 2013, the unit of general local government must remit \$225,000 to HUD for deposit in the United States Treasury, unless HUD approves a request to use \$25,000 of that amount for other NSP purposes. If in this same example, the developer received \$100,000 of NSP funding and used \$100,000 of its own funds for eligible costs, the revenue to be provided to the local government would be \$125,000.

2. Program income generated by activities carried out pursuant to Section 2301(c)(3)(A), (C) and (E). Program income received may be retained by the State or unit of general local government if it is treated as additional CDBG funds and used in accordance with the requirements of Section 2301. Revenue received by a private individual or other entity that is not a subrecipient must be returned to the State or unit of general local government.

3. Cash management. Substantially all program income must be disbursed for eligible NSP activities before additional cash withdrawals are made from the U.S. Treasury.

4. Agreements with subrecipients and other entities. States and units of general local governments must incorporate in subrecipient agreements such provisions as are necessary to ensure compliance with the requirements of this paragraph, including the requirement that program income described in N.1.(b) be remitted to HUD for deposit in the Treasury. States, units of general local government, and subrecipients must incorporate in agreements with private individuals and other entities that are not subrecipients such provisions as are necessary to ensure compliance with the requirements governing disposition of revenue generated by activities carried out pursuant to Section 2301(c).

O. Reporting

Background

HUD is requiring regular reporting on each NSP grant in the DRGR system to ensure the Department gets sufficient management information to follow-up

promptly if a grantee lags in implementation and risks recapture of its grant funds. For NSP only, HUD is waiving the annual reporting requirements of the consolidated plan to allow HUD to collect more regular information on various aspects of the uses of funds and of the activities funded with these grants. HUD will use the reports to exercise oversight for compliance with the requirements of this notice and for prevention of fraud, waste, and abuse of funds.

The regular CDBG performance measurement requirements will not apply to the NSP funds. To the extent feasible, HUD will configure DRGR performance measures to fit the NSP activities and will provide additional guidance on NSP performance measures.

To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report on its NSP funds to HUD using the online DRGR system, which uses a streamlined, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, waste, and abuse of funds; to reconcile budgets, obligations, fund draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to LMMI persons; and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the NSP report on a Web site for its citizens when it submits the report to HUD (DRGR generates a version of the report that the grantee can download, save, and post).

Requirements

1. Performance report alternative requirement. The Secretary may specify the form and timing of reports provided by the grantee under both 42 U.S.C. 5304(e) (the HCD Act) and 42 U.S.C. 12708 (NAHA). Therefore, the consolidated plan regulation at 24 CFR 91.520 is waived and the alternative reporting form and timing for the NSP funds is that:

a. Each grantee must enter its NSP Action Plan amendment into HUD's web-based DRGR system in sufficient detail to meet the NSP action plan content requirements of this notice and to serve as the basis for acceptable performance reports. (Because DRGR was not specifically redesigned for the NSP, HUD field staff will provide grantees with specific technical assistance on where in DRGR the required NSP narrative and data elements must be placed.)

b.i. Each grantee must submit a quarterly performance report, as HUD

prescribes, no later than 30 days following the end of each quarter, beginning 30 days after the completion of the first full calendar quarter after grant award and continuing until the end of the 15th month after initial receipt of grant funds. In addition to this quarterly performance reporting, each grantee will report monthly on its NSP obligations and expenditures beginning 30 days after the end of the 15th month following receipt of funds, and continuing until reported total obligations are equal to or greater than the total NSP grant. After HUD has accepted a report from a grantee showing such obligation of funds, the monthly reporting requirement will end and quarterly reports will continue until all NSP funds (including program income) have been expended and those expenditures are included in a report to HUD, or until HUD issues other instructions pursuant to paragraph b.ii. below. Each report will include information about the uses of funds, including, but not limited to, the project name, activity, location, national objective, funds budgeted and expended, the funding source and total amount of any non-NSP funds, numbers of properties and housing units, beginning and ending dates of activities, and numbers of low- and moderate-income persons or households benefiting. Reports must be submitted using HUD's web-based DRGR system and, at the time of submission, be posted prominently on the grantee's official Web site.

ii. During the winter of 2008–2009, HUD is undertaking a major enhancement of DRGR, initiated as part of a series of improvements designed to prevent fraud, waste, and abuse of funds in the Gulf Coast CDBG disaster recovery programs, whose grantees are reporting on the uses of more than \$19 billion of CDBG disaster recovery funds through DRGR. Prior to roll-out of the enhancement, NSP grantees will use the Voice Response System (VRS) to access the line of credit and will prepare and submit action plans and performance reports through DRGR. After this enhancement is complete, grantees also will be able to access their lines of credit through DRGR. At that time, HUD will issue updated guidance on all DRGR reporting and require most activity data to be updated on a transactional basis.

P. Note That FHA Properties Are Eligible for NSP Acquisition and Redevelopment

The Department notes that it is an eligible use of CDBG grant funds to acquire and redevelop FHA foreclosed

properties. The Department strongly urges every community to consider and include such properties under their NSP programs because the nature and location of many of these homes will make them very compatible with the eligible uses of grant funds, the areas of greatest need, and the income eligibility thresholds and limits. Furthermore, in many areas, FHA foreclosed properties will be available for purchase at below-market value to meet HERA requirements. FHA provides quick access to location, condition, and sales price information; FHA may also offer expedited closing time frames. These factors may help expedite NSP fund use.

HUD will provide technical assistance on its Web site regarding how these programs can effectively interact. Grantees may also contact their local HUD FHA field office for further information.

Q. Purchase Discount

Background

Section 2301(d)(1) limits the purchase price of a foreclosed home, as follows:

Any purchase of a foreclosed upon home or residential property under this section shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property.

To ensure that uncertainty over the meaning of this section does not delay program implementation, HUD is defining "current market appraised value" in this notice. For mortgagee foreclosed properties, HUD is requiring that grantees seek to obtain the "maximum reasonable discount" from the mortgagee, taking into consideration likely "carrying costs" of the mortgagee if it were to not sell the property to the grantee or subrecipient. These likely carrying costs are different from market to market, and the "maximum reasonable discount" is likely to be higher in markets where homes are taking many months to more than a year to sell as compared to markets with shorter average time to sell a property. In recognition of the need for flexibility in administering the purchase discount requirement, HUD has adopted an approach that requires a minimum discount of 5 percent for each residential property purchased with NSP funds and a minimum average discount for all properties acquired with NSP funds over the 18-month HERA use period. The minimum average discount for the "portfolio" of properties acquired with NSP funds depends upon how the purchase discount for an

individual property is determined. If the state, unit of general local government, or subrecipient determines the discount through use of a methodology that incorporates the factors discussed above (keeping in mind that the discount must be at least 5 percent), then the minimum average discount for the NSP portfolio is 10 percent. If not, the minimum average discount is 15 percent. Recipients and subrecipients are cautioned that a purchase discount negotiated with the seller on an individual property that is below the minimum average discount requirement must be offset by a purchase discount that is above the minimum average discount.

Requirements

1.a. Individual purchase transaction. Each foreclosed-upon home or residential property shall be purchased at a discount of at least 5 percent from the current market-appraised value of the home or property.

b. Purchase transactions in the aggregate. Except as set forth below, the average purchase discount for all properties purchased with NSP funds during the 18-month use period shall be at least 15 percent. The average purchase discount shall be at least 10 percent if the state, unit of general local government, or subrecipient determines the maximum reasonable discount for each purchase transaction through use of a methodology that results in a discount equivalent to the total carrying costs that would be incurred by the seller if the property were not purchased with NSP funds (provided the discount is at least 5 percent). Such methodology shall provide for an analysis of the estimated holding period for the property and the nature and amount of the carrying costs of holding the property for this period. Such carrying costs shall include, but not be limited to: Taxes, insurance, maintenance, marketing, overhead, and interest. The procedures to implement such methodology shall be in writing and applied consistently to all purchases. The analysis for each purchase transaction shall be documented in the grantee's program records.

2. An NSP recipient may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal and transfer of title. A property conveyed in this manner to a subrecipient, homebuyer, developer, or jurisdiction will be NSP-assisted and subject to all program requirements, such as requirements for

NSP-eligible use and benefit to income-qualified persons.

3. The address, appraised value, purchase offer amount, and discount amount of each property purchase must be documented in the grantee's program records.

R. Removal of Annual Requirements

Requirement

Throughout 24 CFR parts 91 and 570, all references to "annual" requirements such as submission of plans and reports are waived to the extent necessary to allow the provisions of this notice to apply to NSP funds, with no recurring annual requirements other than those related to civil rights and fair housing certifications and requirements.

S. Affirmatively Furthering Fair Housing

Nothing in this notice may be construed as affecting each grantee's responsibility to carry out its certification to affirmatively further fair housing. HUD encourages each grantee to review its analysis of impediments to fair housing choice to determine whether an update is necessary because of current market conditions or other factors.

T. Certifications

Background

HUD is substituting alternative certifications. The alternative certifications are tailored to NSP grants and remove certifications and references that are appropriate only to the annual CDBG formula program.

Requirements

Certifications for states and for entitlement communities, alternative requirement. Although the NSP is being implemented as a substantial amendment to the current annual action plan, HUD is requiring submission of this alternative set of certifications as a conforming change, reflecting alternative requirements and waivers under this notice. Each jurisdiction will submit the following certifications:

1. Affirmatively furthering fair housing. The jurisdiction certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

2. Anti-lobbying. The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87,

together with disclosure forms, if required by that part.

3. Authority of jurisdiction. The jurisdiction certifies that the consolidated plan is authorized under state and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations and other program requirements.

4. Consistency with plan. The jurisdiction certifies that the housing activities to be undertaken with NSP funds are consistent with its consolidated plan.

5. Acquisition and relocation. The jurisdiction certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24, except as those provisions are modified by the notice for the NSP program published by HUD.

6. Section 3. The jurisdiction certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

7. Citizen participation. The jurisdiction certifies that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of Sections 24 CFR 91.105 or 91.115, as modified by NSP requirements.

8. Following a plan. The jurisdiction certifies it is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

9. Use of funds. The jurisdiction certifies that it will comply with Title III of Division B of the Housing and Economic Recovery Act of 2008 by using all of its grant funds within 18 months of receipt of the grant.

10. The jurisdiction certifies:

- that all of the NSP funds made available to it will be used with respect to individuals and families whose incomes do not exceed 120 percent of area median income; and

- The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if NSP

funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with NSP funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than NSP funds if the jurisdiction certifies that it lacks NSP or CDBG funds to cover the assessment.

11. Excessive force. The jurisdiction certifies that it has adopted and is enforcing:

- A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

- A policy of enforcing applicable state and local laws against physically barring entrance to, or exit from, a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

12. Compliance with anti-discrimination laws. The jurisdiction certifies that the NSP grant will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

13. Compliance with lead-based paint procedures. The jurisdiction certifies that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

14. Compliance with laws. The jurisdiction certifies that it will comply with applicable laws.

U. Note on Statutory Limitation on Distribution of Funds

Section 2304 of HERA states that none of the funds made available under this Title or title IV shall be distributed to an organization that has been indicted for a violation under federal law relating to an election for federal office; or an organization that employs applicable individuals. Section 2304 defines applicable individuals.

V. Information Collection Approval Note

HUD has approval from the Office of Management and Budget (OMB) for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

W. Duration of Funding

The appropriation accounting provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. Such a limitation may not be waived. The appropriations acts for NSP grants direct that these funds be available until expended. However, the Department is imposing a shorter deadline on the expenditure of NSP funds in this notice.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP are as follows: 14.218; 14.225; and 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)(2)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Establishment of Formula

I hereby establish the funding formula set out in Attachment A to this notice.

Dated: September 29, 2008.

Steven C. Preston,
Secretary.

Attachment A

HERA calls for allocating funds “to States and units of general local government with the greatest need, as such need is determined in the discretion of the Secretary based on—

(A) The number and percentage of home foreclosures in each State or unit of general local government;

(B) The number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government; and

(C) The number and percentage of homes in default or delinquency in each

State or unit of general local government.”

It further directs that “each State shall receive not less than 0.5 percent of funds”. The allocation formula operates as follows. In this formula, the primary data on foreclosure rates, subprime loan rates, and rates of loans delinquent or in default come from the Mortgage Bankers

Association National Delinquency Survey (MBA–NDS). Because the MBA–NDS may have uneven coverage from state-to-state in respect to the total number of mortgages reported, the total count of mortgages is calculated as the number of owner-occupied mortgages from the 2006 American Community

Survey increased with data from the Home Mortgage Disclosure Act to capture the proportion of total mortgages made within a state made to investors between 2004 and 2006. The first step of the allocation is to make a “statewide” allocation using the following formula:

Statewide Allocation = \$3.92 billion*

$$\begin{aligned} & \{ [0.70 * \frac{(\text{State's number of foreclosure starts in last 6 quarters})^*}{\text{National number of foreclosure starts in last 6 quarters}} + \frac{(\text{Percent of all loans in state to enter foreclosure last 6 quarters})}{\text{Percent of all loans in nation to enter foreclosure last 6 quarters}} + \\ & 0.15 * \frac{(\text{State's number of subprime loans})^*}{\text{National number of subprime loans}} + \frac{(\text{Percent of all loans in state subprime})}{\text{Percent of all loans in nation subprime}} + \\ & 0.10 * \frac{(\text{State's number of loans in default (90+ days delinquent)})^*}{\text{National number of loans in default}} + \frac{(\text{Percent of all loans in state in default})}{\text{Percent of all loans in nation in default}} + \\ & 0.05 * \frac{(\text{State's number of loans 60 to 89 days delinquent})^*}{\text{National number of loans 60 to 89 days delinquent}} + \frac{(\text{Percent of all loans in state 60 to 89 days delinquent})^*}{\text{National percent of all loans 60 to 89 days delinquent}} \} \\ & \frac{(\text{Pct of all addresses in state vacant in Census Tracts where more than 40\% of the 2004 to 2006 loans were high costs})}{\text{Pct of all addresses in nation vacant in Census Tracts where more than 40\% of the 2004 to 2006 loans were high cost}} \end{aligned}$$

This formula allocates 70 percent of the funds based on the number and percent of foreclosures, 15 percent for subprime loans, 10 percent for loans in default (delinquent 90 days or longer), and 5 percent for loans delinquent 60 to 90 days. The higher weight on foreclosures is based on the emphasis the statute places on targeting foreclosed homes. The percentage adjustments, the rate of a problem in a state relative to the national rate of a problem, are restricted such that a state's allocation based on its proportional share of a problem cannot be increased or decreased by more than 30 percent.

Because HERA specifically indicates that the funds are needed for the “redevelopment of abandoned and foreclosed upon homes and residential properties”, HUD has included a variable to proxy where abandonment of homes due to foreclosure is more likely, specifically each state's rate of vacant residential addresses in neighborhoods with a high proportion (more than 40 percent) of loans in 2004 to 2006 that were high cost. Information on vacant addresses is based on United States Postal Service data as of June 30, 2008

aggregated by HUD to the Census Tract level. The residential vacancy adjustment factor reflects a state's vacancy rate relative to the national average and cannot increase or decrease a state's proportional share of the allocation based on foreclosures, subprime loans, and delinquencies and defaults by more than 10 percent.

Finally, if a statewide allocation is less than \$19.6 million, the statewide grant is increased to \$19.6 million. Because this approach will result in a total allocation in excess of appropriation, all grant amounts above \$19.6 million are reduced pro-rata to make the total allocation equal to the total appropriation.

From each statewide allocation, a substate allocation is made as follows:

- Each state government is allocated \$19.6 million.
- If the statewide allocation is more than \$19.6 million, the remaining funds are allocated to FY 2008 CDBG entitlement cities, urban counties, and non-entitlement balance of state proportional to relative need.
- If a local government receives less than \$2 million under this sub-

allocation, their grant is rolled up into the state government grant.

Note that HUD has determined that HERA's direction that a minimum of \$19.6 million be allocated to the state means that a minimum grant must be provided to each state government of \$19.6 million. As a result, this approach provides state governments with proportionally more funding than their estimated need. As such, state governments should use their best judgment to serve both those areas not receiving a direct grant and those areas that do receive a direct grant, making sure that the total of all funds in the state are going proportionally more to those places (as prescribed by HERA):

- “With the greatest percentage of home foreclosures;
- With the highest percentage of homes financed by a subprime mortgage related loan; and
- Identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures.”

For the amount of funds above each state's \$19.6 million, the remaining funds are allocated among the entitlement communities and non-

entitlement balances using the following formula:

$$\text{Local Allocation} = (\text{Statewide allocation} - \$19,600,000) *$$

$$\frac{[(\text{Local estimate number of foreclosure starts in last 6 quarters}) *]}{\text{State total number of foreclosure starts in last 6 quarters}}$$

$$\frac{(\text{Local vacancy rate in Census Tracts with more than 40\% of the loans High-cost})}{\text{State vacancy rate in Census Tracts with more than 40\% of the loans High-cost}}$$

Where the residential vacancy rate adjustment cannot increase or reduced a local jurisdiction's allocation by more than 30 percent and the estimated number of foreclosures is calculated based on a predicted foreclosure rate times the estimated number of mortgages in a community. HUD analysis shows that 75 percent of the variance between states on foreclosure rates can be explained by three variables available from public data:

- Office of Federal Housing Enterprise Oversight (OFHEO) data on change in home values as of June 2008 compared to peak home value since 2000.
- Percent of all loans made between 2004 and 2006 that are high cost as reported in the Home Mortgage Disclosure Act (HMDA).
- Unemployment rate as of June 2008 (from Bureau of Labor Statistics).

Because these three variables are publicly available for all CDBG eligible

communities and they are good predictors of foreclosure risk, they are used in a model to calculate the estimated number of foreclosures in each jurisdiction within a state. The formula used is as follows:

$$\begin{aligned} \text{Predicted Foreclosure Rate} = & - 2.211 \\ & - (0.131 * \text{Percent change in MSA} \\ & \text{OFHEO current price relative to the} \\ & \text{maximum in past 8 years}) \\ & + (0.152 * \text{Percent of total loans made} \\ & \text{between 2004 and 2006 that are} \\ & \text{high cost}) \\ & + (0.392 * \text{Percent unemployed in the} \\ & \text{place our county in June 2008}). \end{aligned}$$

This predicted foreclosure rate is then multiplied times the estimated number of mortgages within a jurisdiction (number of HMDA loans made between 2004 and 2006 times the ratio of ACS 2006 data on total mortgages in state / HMDA loans in state). This "estimated number of mortgages in the jurisdiction" is further adjusted such that the estimated number of

foreclosures from the model will equal the total foreclosure starts in the state from the Mortgage Bankers Association National Delinquency Survey.

As noted above, for entitlement cities and urban counties that would receive an NSP allocation of less than \$2 million, the funds are allocated to the state grantee. The District of Columbia and the four Insular Areas receive direct allocations and are not subject to the minimum grant threshold.

Because this funding is one-time funding and the eligible activities under the program are different enough from the regular program, HUD believes that a grantee must receive a minimum amount of \$2 million to have adequate staffing to properly administer the program effectively. In addition, fewer grants will allow HUD staff to more effectively monitor grantees to ensure proper implementation of the program and reduce the risk for fraud, waste, and abuse.

State	Grantee name	NSP grant amount
AK	ALASKA STATE PROGRAM	\$19,600,000
AL	ALABAMA STATE PROGRAM	37,033,031
AL	BIRMINGHAM	2,580,214
AL	JEFFERSON COUNTY	2,237,876
AR	ARKANSAS STATE PROGRAM	19,600,000
AZ	PHOENIX	39,478,096
AZ	ARIZONA STATE PROGRAM	38,370,206
AZ	MARICOPA COUNTY	9,974,267
AZ	MESA	9,659,665
AZ	TUCSON	7,286,911
AZ	GLENDALE	6,184,112
AZ	PIMA COUNTY	3,086,867
AZ	AVONDALE CITY	2,466,039
AZ	CHANDLER	2,415,100
AZ	SURPRISE TOWN	2,197,786
CA	CALIFORNIA STATE PROGRAM	145,071,506
CA	RIVERSIDE COUNTY	48,567,786
CA	LOS ANGELES	32,860,870
CA	SAN BERNARDINO COUNTY	22,758,188
CA	SACRAMENTO COUNTY	18,605,460
CA	LOS ANGELES COUNTY	16,847,672
CA	SACRAMENTO	13,264,829
CA	STOCKTON	12,146,038
CA	MORENO VALLEY	11,390,116
CA	KERN COUNTY	11,211,385
CA	FRESNO	10,969,169

State	Grantee name	NSP grant amount
CA	STANISLAUS COUNTY	9,744,482
CA	SAN DIEGO	9,442,370
CA	SAN JOAQUIN COUNTY	9,030,385
CA	BAKERSFIELD	8,982,836
CA	SAN BERNARDINO	8,408,558
CA	OAKLAND	8,250,668
CA	MODESTO	8,109,274
CA	PALMDALE	7,434,301
CA	FRESNO COUNTY	7,037,465
CA	LANCASTER	6,983,533
CA	RIVERSIDE	6,581,916
CA	CONTRA COSTA COUNTY	6,019,051
CA	FONTANA	5,953,309
CA	SANTA ANA	5,795,151
CA	SAN JOSE	5,628,283
CA	RIALTO	5,461,574
CA	VICTORVILLE	5,311,363
CA	SAN DIEGO COUNTY	5,144,152
CA	LONG BEACH	5,070,310
CA	HESPERIA	4,590,719
CA	ANTIOCH	4,049,228
CA	CORONA	3,602,842
CA	POMONA	3,530,825
CA	RICHMOND	3,346,105
CA	ORANGE COUNTY	3,285,926
CA	COMPTON	3,242,817
CA	APPLE VALLEY	3,064,836
CA	HEMET	2,888,473
CA	CHULA VISTA	2,830,072
CA	ONTARIO	2,738,309
CA	VALLEJO	2,657,861
CA	ANAHEIM	2,653,455
CA	ELK GROVE	2,389,651
CA	VISALIA	2,388,331
CA	RANCHO CUCAMONGA	2,133,397
CA	ALAMEDA COUNTY	2,126,927
CO	COLORADO STATE PROGRAM	34,013,566
CO	DENVER	6,060,170
CO	ADAMS COUNTY	4,600,211
CO	AURORA	4,474,097
CO	COLORADO SPRINGS	3,904,989
CT	CONNECTICUT STATE PROG	25,043,385
DC	WASHINGTON	2,836,384
DE	DELAWARE STATE PROGRAM	19,600,000
FL	FLORIDA STATE PROGRAM	91,141,478
FL	MIAMI-DADE COUNTY	62,207,200
FL	ORANGE COUNTY	27,901,773
FL	PALM BEACH COUNTY	27,700,340
FL	JACKSONVILLE-DUVAL	26,175,317
FL	PASCO COUNTY	19,495,805
FL	HILLSBOROUGH COUNTY	19,132,978
FL	LEE COUNTY	18,243,867
FL	BROWARD COUNTY	17,767,589
FL	POLK COUNTY	14,586,258
FL	TAMPA	13,600,915
FL	PORT ST LUCIE	13,523,132
FL	MIAMI	12,063,702
FL	ST PETERSBURG	9,498,962
FL	MIRAMAR	9,312,658
FL	PINELLAS COUNTY	8,063,759
FL	HOLLYWOOD	7,534,603
FL	COLLIER COUNTY	7,306,755
FL	SARASOTA COUNTY	7,140,861
FL	CAPE CORAL	7,065,484
FL	SEMINOLE COUNTY	7,019,514
FL	MIAMI GARDENS CITY	6,866,119
FL	ORLANDO	6,730,263
FL	DELTONA	6,635,909
FL	MARION COUNTY	6,324,055
FL	HIALEAH	5,385,046
FL	MANATEE COUNTY	5,283,122
FL	BREVARD COUNTY	5,269,667
FL	VOLUSIA COUNTY	5,222,831

State	Grantee name	NSP grant amount
FL	PALM BAY	5,208,104
FL	TAMARAC	4,772,218
FL	ESCAMBIA COUNTY	4,565,918
FL	PEMBROKE PINES	4,398,575
FL	POMPANO BEACH	4,366,157
FL	WEST PALM BEACH	4,349,546
FL	LAUDERHILL	4,293,288
FL	FT LAUDERDALE	3,700,096
FL	SUNRISE	3,494,986
FL	CORAL SPRINGS	3,378,142
FL	LAKE COUNTY	3,136,967
FL	BOYNTON BEACH	2,963,311
FL	HOMESTEAD CITY	2,887,010
FL	NORTH MIAMI	2,847,089
FL	KISSIMMEE	2,371,749
FL	FT MYERS	2,297,318
FL	MARGATE	2,106,555
FL	PLANTATION	2,016,309
FL	LAKELAND	2,005,781
FL	DEERFIELD BEACH	2,005,699
GA	GEORGIA STATE PROGRAM	77,085,125
GA	DE KALB COUNTY	18,545,013
GA	ATLANTA	12,316,082
GA	GWINNETT COUNTY	10,507,827
GA	FULTON COUNTY	10,333,410
GA	CLAYTON COUNTY	9,732,126
GA	COBB COUNTY	6,889,134
GA	COLUMBUS-MUSCOGEE	3,117,039
GA	AUGUSTA	2,473,064
GA	SAVANNAH	2,038,631
HI	HAWAII STATE PROGRAM	19,600,000
IA	IOWA STATE PROGRAM	21,607,197
ID	IDAHO STATE PROGRAM	19,600,000
IL	CHICAGO	55,238,017
IL	ILLINOIS STATE PROGRAM	53,113,044
IL	COOK COUNTY	28,156,321
IL	DU PAGE COUNTY	5,176,438
IL	WILL COUNTY	5,160,424
IL	LAKE COUNTY	4,600,800
IL	JOLIET	3,531,810
IL	MCCHENRY COUNTY	3,085,695
IL	AURORA	3,083,568
IL	KANE COUNTY	2,576,369
IL	ROCKFORD	2,287,004
IL	ST CLAIR COUNTY	2,262,015
IL	ELGIN	2,159,623
IL	CICERO	2,078,351
IN	INDIANA STATE PROGRAM	83,757,048
IN	INDIANAPOLIS	29,051,059
IN	FORT WAYNE	7,063,956
IN	LAKE COUNTY	5,738,024
IN	SOUTH BEND	4,098,521
IN	HAMMOND	3,860,473
IN	GARY	3,836,758
IN	EVANSVILLE	3,605,204
IN	HAMILTON COUNTY	2,343,868
IN	ELKHART	2,251,346
IN	KOKOMO	2,181,088
IN	ANDERSON	2,141,795
IN	MUNCIE	2,007,356
KS	KANSAS STATE PROGRAM	20,970,242
KY	KENTUCKY STATE PROGRAM	37,408,788
KY	LOUISVILLE	6,973,721
LA	LOUISIANA STATE PROGRAM	34,183,994
LA	BATON ROUGE	2,308,848
LA	NEW ORLEANS	2,302,208
MA	MASSACHUSETTS STATE PROG	43,466,030
MA	BOSTON	4,230,191
MA	SPRINGFIELD	2,566,272
MA	WORCESTER	2,390,858
MA	BROCKTON	2,152,979
MD	MARYLAND STATE PROGRAM	28,778,469
MD	PRINCE GEORGES COUNTY	10,883,234

State	Grantee name	NSP grant amount
MD	BALTIMORE	4,112,239
MD	BALTIMORE COUNTY	2,596,880
ME	MAINE STATE PROGRAM	19,600,000
MI	MICHIGAN STATE PROGRAM	98,653,915
MI	DETROIT	47,137,690
MI	WAYNE COUNTY	25,909,153
MI	OAKLAND COUNTY	17,383,776
MI	MACOMB COUNTY	9,765,375
MI	GENESEE COUNTY	7,506,343
MI	GRAND RAPIDS	6,187,686
MI	LANSING	5,992,160
MI	WARREN	5,829,447
MI	FLINT	4,224,621
MI	KENT COUNTY	3,912,796
MI	PONTIAC	3,542,002
MI	SOUTHFIELD	3,241,457
MI	REDFORD	3,041,364
MI	WASHTENAW COUNTY	3,024,719
MI	TAYLOR	2,495,056
MI	STERLING HEIGHTS	2,454,961
MI	DEARBORN	2,436,246
MI	LINCOLN PARK	2,417,688
MI	CANTON TWP	2,182,988
MI	CLINTON TWP	2,147,608
MI	WESTLAND	2,061,722
MI	WATERFORD TOWNSHIP	2,014,489
MN	MINNESOTA STATE PROGRAM	38,849,929
MN	MINNEAPOLIS	5,601,967
MN	ST PAUL	4,302,249
MN	HENNEPIN COUNTY	3,885,729
MN	DAKOTA COUNTY	2,765,991
MN	ANOKA COUNTY	2,377,310
MO	MISSOURI STATE PROGRAM	42,664,187
MO	ST LOUIS COUNTY	9,338,562
MO	KANSAS CITY	7,323,734
MO	ST LOUIS	5,532,792
MS	MISSISSIPPI STATE PROG	43,151,914
MS	JACKSON	3,116,049
MT	MONTANA STATE PROGRAM	19,600,000
NC	NORTH CAROLINA STA PROG	52,303,004
NC	CHARLOTTE	5,431,777
ND	NORTH DAKOTA STATE PROG	19,600,000
NE	NEBRASKA STATE PROGRAM	19,600,000
NH	NEW HAMPSHIRE STATE PROG	19,600,000
NJ	NEW JERSEY STATE PROGRAM	51,470,620
NJ	NEWARK	3,406,849
NJ	UNION COUNTY	2,601,755
NJ	PATERSON	2,266,641
NJ	JERSEY CITY	2,153,431
NJ	BERGEN COUNTY	2,096,194
NM	NEW MEXICO STATE PROGRAM	19,600,000
NV	NEVADA STATE PROGRAM	24,287,240
NV	CLARK COUNTY	22,829,062
NV	LAS VEGAS	14,775,270
NV	NORTH LAS VEGAS	6,837,736
NV	HENDERSON	3,205,044
NY	NEW YORK STATE PROGRAM	54,556,464
NY	NEW YORK CITY	24,257,740
NY	NASSAU COUNTY	7,767,916
NY	SUFFOLK COUNTY	5,681,443
NY	ISLIP TOWN	3,720,392
NY	BABYLON TOWN	2,170,909
NY	ORANGE COUNTY	2,163,744
OH	OHIO STATE PROGRAM	116,859,223
OH	COLUMBUS	22,845,495
OH	CLEVELAND	16,143,120
OH	TOLEDO	12,270,706
OH	CUYAHOGA COUNTY	11,212,447
OH	AKRON	8,583,492
OH	CINCINNATI	8,361,592
OH	HAMILTON COUNTY	7,970,490
OH	MONTGOMERY COUNTY	5,988,000
OH	DAYTON	5,582,902

State	Grantee name	NSP grant amount
OH	FRANKLIN COUNTY	5,439,664
OH	BUTLER COUNTY	4,213,742
OH	STARK COUNTY	4,181,673
OH	SUMMIT COUNTY	3,767,144
OH	CANTON	3,678,562
OH	LAKE COUNTY	3,402,859
OH	LORAIN	3,031,480
OH	YOUNGSTOWN	2,708,206
OH	EUCLID	2,580,464
OH	ELYRIA	2,468,215
OH	HAMILTON CITY	2,385,315
OH	SPRINGFIELD	2,270,009
OH	MIDDLETOWN	2,144,379
OK	OKLAHOMA STATE PROGRAM	29,969,459
OK	OKLAHOMA CITY	2,882,282
OR	OREGON STATE PROGRAM	19,600,000
PA	PENNSYLVANIA STATE PROG	59,631,318
PA	PHILADELPHIA	16,832,873
PA	ALLEGHENY COUNTY	5,524,950
PA	ALLENTOWN	2,113,456
PA	YORK COUNTY	2,017,253
PA	PITTSBURGH	2,002,958
PR	PUERTO RICO STATE PROG	19,600,000
RI	RHODE ISLAND STATE PROG	19,600,000
SC	SOUTH CAROLINA STA PROG	44,673,692
SC	GREENVILLE COUNTY	2,262,856
SC	RICHLAND COUNTY	2,221,859
SD	SOUTH DAKOTA STATE PROG	19,600,000
TN	TENNESSEE STATE PROGRAM	49,360,421
TN	MEMPHIS	11,506,415
TN	NASHVILLE-DAVIDSON	4,051,398
TN	SHELBY COUNTY	2,752,708
TN	KNOXVILLE	2,735,980
TN	CHATTANOOGA	2,113,727
TX	TEXAS STATE PROGRAM	101,996,848
TX	HARRIS COUNTY	14,898,027
TX	HOUSTON	13,542,193
TX	SAN ANTONIO	8,635,899
TX	DALLAS	7,932,555
TX	FORT WORTH	6,307,433
TX	DALLAS COUNTY	4,405,482
TX	TARRANT COUNTY	3,293,388
TX	EL PASO	3,032,465
TX	HIDALGO COUNTY	2,867,057
TX	FORT BEND COUNTY	2,796,177
TX	GRAND PRAIRIE	2,267,290
TX	MESQUITE	2,083,933
TX	ARLINGTON	2,044,254
TX	GARLAND	2,040,196
UT	UTAH STATE PROGRAM	19,600,000
VA	VIRGINIA STATE PROGRAM	38,749,931
VA	PRINCE WILLIAM COUNTY	4,134,612
VA	FAIRFAX COUNTY	2,807,300
VT	VERMONT STATE PROGRAM	19,600,000
WA	WASHINGTON STATE PROGRAM	28,159,293
WI	WISCONSIN STATE PROGRAM	38,779,123
WI	MILWAUKEE	9,197,465
WV	WEST VIRGINIA STATE PROG	19,600,000
WY	WYOMING STATE PROGRAM	19,600,000
XX	INSULAR AREAS	1,144,289

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Federal Register

**Monday,
October 6, 2008**

Part IV

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants for Chemical
Manufacturing Area Sources; Proposed
Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2008-0334; FRL-8720-8]

RIN 2060-AM19

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing national emissions standards for hazardous air pollutants for nine area source categories in the chemical manufacturing sector: Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production, and Synthetic Rubber Manufacturing. The proposed standards and associated requirements for the nine area source categories are combined in one subpart. The proposed emissions standards for new and existing sources are based on EPA's determination regarding the generally available control technology or management practices for the nine area source categories. EPA is co-proposing an alternative to the requirements for process vents emitting metal hazardous air pollutants. The alternative would set a higher size threshold for large metal hazardous air pollutant process vents.

DATES: Comments must be received on or before November 5, 2008, unless a public hearing is requested by October 16, 2008. If a hearing is requested on the proposed rule, written comments must be received by November 20, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before November 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0334, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: a-and-r-Docket@epa.gov.
- *Fax*: (202) 566-9744.
- *Mail*: U.S. Postal Service: send comments to: National Emission

Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources Docket, Environmental Protection Agency, EPA Docket Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery*: In person or by courier, deliver comments to: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., 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-2008-0334. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources Docket at the EPA Docket and Information Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5402; fax number: (919) 541-0246; e-mail address: mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION: *Outline.*

The information in this preamble is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. What should I consider as I prepare my comments to EPA?
 - C. Where can I get a copy of this document?
 - D. When would a public hearing occur?
- II. Background Information for the Proposed Area Source Standards
 - A. What is the statutory authority and regulatory approach for the proposed standards?
 - B. What area source categories are affected by the proposed standards?
 - C. How did we gather information for this proposed standard?
 - D. What are the production processes, emission points, and available controls?
- III. Summary of the Proposed Standards
 - A. Do the proposed standards apply to my source?
 - B. When must I comply with the proposed standards?
 - C. What are the proposed emissions standards?
 - D. What are the initial and continuous compliance requirements?
 - E. What are the notification, recordkeeping, and reporting requirements?
- IV. Rationale for This Proposed Rule
 - A. How did we subcategorize emission sources?
 - B. How did we determine GACT?
 - C. How did we select compliance requirements?
 - D. Why did we decide to exempt these area source categories from title V permitting requirements?
- V. Impacts of the Proposed Standards
 - A. What are the air impacts?
 - B. What are the cost impacts?
 - C. What are the economic impacts?
 - D. What are the non-air health, environmental, and energy impacts?

- VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175
 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed action are shown in the table below. This proposed rule applies to chemical manufacturing operations at any of nine chemical manufacturing area source categories that process, use, produce, or generate any of the following hazardous air pollutants (HAP): 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel. If the proposed

standards are applicable to a chemical manufacturing area source, the standards apply to all organic HAP emissions and all metal HAP emissions from all chemical manufacturing operations at the area source. The proposed standards do not apply to hydrogen halide and halogen HAP (i.e., hydrogen chloride, chlorine, and hydrogen fluoride) at affected sources,¹ except when these HAP are generated in combustion-based emission control devices that are used to meet the proposed standards for organic HAP. For additional information about applicability provisions, see section III.A of this preamble.

Industry category	NAICS code ¹	Examples of regulated entities
Chemical manufacturing.	325	Chemical manufacturing area sources that process, use, or produce any of the HAP subject to this subpart except for: (1) Production operations classified in NAICS 325222, 325314, or 325413; (2) production operations subject to standards for other listed area source categories ² in NAICS 325; (3) certain fabricating operations; (4) manufacture of photographic film, paper, and plate where material is coated or contains chemicals (only the manufacture of the photographic chemicals would be regulated); and (5) manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium, and uranium.

¹ North American Industry Classification System.

² All of the other source categories in NAICS 325 for which other standards apply are: Acrylic Fibers/Modacrylic Fibers Production, Chemical Preparation, Carbon Black, Chemical Manufacturing: Chromium Compounds, Polyvinyl Chloride and Copolymers Production, Paint and Allied Coatings, and Mercury Cell Chlor-Alkali Manufacturing.

Area sources in NAICS 325 not specifically identified in the chart above are affected by this action. To determine whether your chemical manufacturing area source would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11494 of subpart VVVVVV (NESHAP for Chemical Manufacturing Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA-HQ-OAR-2008-0334. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology

exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by October 16, 2008, we will hold a public hearing on October 21, 2008. If you are interested in attending the public hearing, contact Ms. Janet Eck at (919) 541-7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for the Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for the proposed standards?

Section 112(d) of the Clean Air Act (CAA) requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or

¹ The affected source is the chemical manufacturing operations at area sources in one of the nine source categories subject to this proposed rule. Chemical manufacturing operations include

all process equipment and activities that process, use, produce, or generate any of the HAP listed in Table 1 of this subpart. Chemical manufacturing operations also includes all storage tanks, transfer

racks, cooling tower systems, wastewater systems, and equipment associated with the production of chemicals at an area source subject to the proposed rule.

has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP that, as a result of emissions of area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "30 urban HAP." Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." Additional information on generally available control technologies or management practices (GACT) is found in the Senate report on the legislation (Senate report Number 101-228, December 20, 1989), which describes GACT as:

* * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have many small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available

to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as we have already noted, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 10 area source categories listed pursuant to section 112(c)(3) and (k) by December 15, 2008 (*Sierra Club v. Johnson*, no. 01-1537, D.D.C., March 2006). As part of our effort to meet this deadline, we are proposing in this action the NESHAP for the nine area source categories that are described in section II.B of this preamble. Another rulemaking will include standards for the remaining source category that is due in December 2008.

B. What area source categories are affected by the proposed standards?

This proposed NESHAP affects chemical manufacturing operations at nine area source categories: (1) Agricultural Chemicals and Pesticides Manufacturing; (2) Cyclic Crude and Intermediate Production; (3) Industrial Inorganic Chemical Manufacturing; (4) Industrial Organic Chemical Manufacturing; (5) Inorganic Pigments Manufacturing; (6) Miscellaneous Organic Chemical Manufacturing; (7) Plastic Materials and Resins Manufacturing; (8) Pharmaceutical Production; and (9) Synthetic Rubber Manufacturing. The inclusion of each of these source categories on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. In this preamble and proposed rule we refer to the nine source categories collectively as chemical manufacturing area sources. Descriptions of the nine source categories are as follows:

Agricultural Chemicals and Pesticides Manufacturing. The agricultural chemicals and pesticides manufacturing source category is designated by NAICS codes 325311 (nitrogenous fertilizer manufacturing), 325312 (phosphatic fertilizer manufacturing), and 325320 (pesticide and other agricultural chemical manufacturing). Products of this industry include nitrogenous and phosphatic fertilizer materials including

anhydrous ammonia, nitric acid, ammonium nitrate, ammonium sulfate, urea, phosphoric acid, superphosphates, ammonium phosphates, and calcium metaphosphates. The source category also includes the formulation and preparation of ready-to-use agricultural and household pest control chemicals from technical chemicals or concentrates, the production of concentrates which require further processing before use as agricultural pesticides, and the manufacturing or formulating of other agricultural chemicals such as minor or trace elements and soil conditioners.

Organic Chemical Production. The cyclic crude and intermediate production, industrial organic chemical manufacturing, and miscellaneous organic chemical manufacturing source categories are discussed collectively because there is considerable overlap in the NAICS codes that apply to these source categories. These source categories are designated by NAICS codes 32511 (petrochemical manufacturing), 325132 (synthetic organic dye and pigment manufacturing), 32519 (other basic organic chemical manufacturing), 325221 (cellulosic organic fiber manufacturing), and 3256 (soap, cleaning compound, and toilet preparation manufacturing). The source category also includes organic gases designated by NAICS code 325120 (industrial gas manufacturing), and it includes production of chemicals such as explosives and photographic chemicals designated by NAICS code 3259 (other chemical product and preparation manufacturing).

Raw materials for this industry include, for example, refined petroleum chemicals, coal tars, and wood. The industry manufactures a wide variety of final products as well as numerous chemicals that are used as feedstocks to produce these final products and products in other chemical manufacturing source categories. Examples of types of products include solvents, organic dyes and pigments, plasticizers, alcohols, detergents, and flavorings.

Industrial Inorganic Chemical Manufacturing. The industrial inorganic chemical manufacturing source category includes manufacturing of inorganic gases that are designated by NAICS code 325120 (industrial gas manufacturing), manufacturing of inorganic dyes that are designated by NAICS code 325131 (inorganic dye and pigment manufacturing), and most manufacturing designated by NAICS code 32518 (other basic inorganic chemical manufacturing). Exceptions to

production designated by NAICS code 32518 include carbon black and mercury cell chlor-alkali production, which are separate source categories.

Inorganic Pigment Manufacturing. Inorganic pigments are part of NAICS code 325131 (Inorganic Dye and Pigment Manufacturing). The majority of inorganic pigments are oxides, sulfides, oxide hydroxides, silicates, sulfates, or carbonates that normally consist of single component particles.

The inorganic pigment manufacturing processes can generally be divided between those that use partial combustion and those that use pure pyrolysis. Inorganic pigments generally are used to impart colors to a variety of compounds. They may also impart properties of rust inhibition, rigidity, and abrasion resistance. Inorganic pigments are generally insoluble and remain unchanged physically and chemically when mixed with a carrier.

Pigment manufacturers supply inorganic colors in a variety of forms including powders, pastes, granules, slurries, and suspensions. Pigments are used in the manufacture of paints and stains, printing inks, plastics, synthetic textiles, paper, cosmetics, contact lenses, soaps, detergents, wax, modeling clay, chalks, crayons, artists' colors, concrete, masonry products, and ceramics.

Pharmaceutical Production. The pharmaceutical manufacturing source category consists of chemical production operations that produce drugs and medication. These operations include chemical synthesis (deriving a drug's active ingredient) and chemical formulation (producing a drug in its final form). The source category is designated by NAICS codes 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), and 325414 (biological product, except diagnostic, manufacturing).

Plastic Materials and Resins Manufacturing. This source category is designated by NAICS code 325211 (plastics material and resin manufacturing). Examples of products in this source category include epoxy resins, nylon resins, phenolic resins, polyesters, polyethylene resins, and styrene resins. The source category does not include polyvinyl chloride and copolymers production, which is a separate source category.

Synthetic Rubber Manufacturing. The synthetic rubber manufacturing source category is designated by NAICS code 325212 (synthetic rubber manufacturing). Facilities in this source category manufacture synthetic rubber or vulcanizable elastomers by

polymerization or copolymerization. For this source category, an elastomer is defined as a rubber-like material capable of vulcanization, such as copolymers of butadiene and styrene, copolymers of butadiene and acrylonitrile, polybutadienes, chloroprene rubbers, and isobutylene-isoprene copolymers.

We listed Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, and Synthetic Rubber Manufacturing as area source categories under CAA section 112(c)(3) as part of the 1999 Integrated Urban Strategy (64 FR 38721, July 19, 1999). On June 26, 2002, we amended the area source category list by adding source categories, including Agricultural Chemicals and Pesticides Manufacturing, Miscellaneous Organic Chemical Manufacturing, and Pharmaceutical Production (67 FR 43112, 43113). On November 22, 2002, we added Inorganic Pigments Manufacturing to the area source category list (67 FR 70427, 70428). These nine area source categories encompass nearly all of the chemical manufacturing industry described in NAICS 325.

The urban HAP that must be regulated at chemical manufacturing area sources to achieve the section 112(c)(3) requirement to regulate 90 percent of urban HAP are:

- 1,3-butadiene
- 1,3-dichloropropene
- acetaldehyde
- chloroform
- ethylene dichloride
- methylene chloride
- hexachlorobenzene
- hydrazine
- quinoline
- HAP metals: compounds of arsenic, cadmium, chromium, lead, manganese, and nickel

These urban HAP are hereafter collectively referred to as the "chemical manufacturing urban HAP". The organic HAP and hydrazine, which is controlled in the same manner as the organic HAP, are hereafter referred to as the "chemical manufacturing organic urban HAP". The metal HAP are hereafter referred to as the "chemical manufacturing metal urban HAP."

Based on information in the National Emissions Inventory (NEI), the Toxics Release Inventory (TRI), and other supplemental information, we estimate that about 1,700 facilities are chemical manufacturing area sources. Approximately 450 of these area sources emit at least one of the chemical manufacturing urban HAP. We estimate

that, collectively, the chemical manufacturing area sources emit about 450 tpy of the chemical manufacturing organic urban HAP (including 0.4 tpy of hydrazine) and 51 tpy of the chemical manufacturing metal urban HAP. Total organic and metal HAP emissions from the 450 chemical manufacturing area sources that emit any of the chemical manufacturing urban HAP are estimated to be about 1,450 tons/yr.

C. How did we gather information for this proposed standard?

We gathered information for this proposed rule from the 2002 NEI, the 2002 and 2004 TRI; company Web sites, published literature, and current State and Federal regulations.

We developed an initial list of area sources in these categories based on facilities in the 2002 NEI database that were designated as area sources and classified with any of the SIC codes for chemical manufacturing. We added facilities classified as major sources in the NEI database to the list of area sources if reported emissions were much less than major source threshold, and no other information was available to confirm the facility as a major source. We also reviewed the TRI database and we identified facilities classified with any of the chemical manufacturing standard industrial classification (SIC) codes that had emissions less than half the major source thresholds and added these facilities to the list of area sources if they were not also listed in the NEI database. We also removed facilities from the list based on information from permits, company Web sites, and other available resources that showed a facility was closed, did not manufacture chemicals, or is a major source already subject to MACT standards.

Emission records in the NEI database were determined to be applicable to chemical manufacturing operations if the source classification code (SCC) was specific to one of the chemical manufacturing industries (e.g., pharmaceuticals manufacturing). We considered other records to be applicable if the SIC code or the NEI database MACT code was applicable for the chemical manufacturing industry, and the SCC was not clearly for non-chemical manufacturing operations such as external combustion or solvent cold cleaners.

We found that many of the records in the NEI could not be readily assigned to one of the six types of emission points subject to the proposed rule. Therefore, to estimate emissions by emission point we used only the total organic HAP emissions and total metal HAP

emissions (and corresponding urban HAP fractions) for each facility. We then disaggregated the total organic HAP emissions per facility to process vents, storage tanks, equipment leaks, and wastewater systems assuming the average distribution for major sources also applies to area sources. We estimated organic HAP emissions from transfer operations and cooling towers separately.

Although emissions from transfer operations may have been included in the NEI data, information from major sources indicates that these emissions are small relative to emissions from the other emission points. Furthermore, many chemical manufacturing facilities do not ship liquids containing organic HAP by rail or tank truck. Therefore, we determined it was simpler to estimate emissions from transfer operations separately. To estimate these emissions, we assumed half of the area sources that emit organic HAP have transfer operations and used the model transfer racks that were developed for facilities that are subject to the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, commonly known as the "hazardous organic NESHAP" (HON) in 40 CFR part 63, subpart G. Because the estimated emissions are so small, the impact of adding them to the NEI emissions estimate of nationwide emissions from the source category is negligible.

Few NEI records were clearly for cooling towers, and most of those focused on chlorine emissions, presumably from the use of biocides. Organic HAP emissions from cooling towers occur only as a result of a malfunction in heat exchange equipment that allows process fluid to leak into the recirculating cooling water and then volatilize as the contaminated water falls through the cooling tower. Because the emissions are the result of malfunctions, we assumed that they are not included in the NEI. Most area sources also are not monitoring cooling tower systems for leaks. However, if operation at area sources is similar to operation at major sources, it is likely that cooling tower systems are a significant source of organic HAP emissions. Therefore, we estimated emissions from cooling tower systems based on typical recirculation rates for cooling towers at chemical manufacturing sources and assumed leak frequencies and concentrations.

We assumed metal HAP are emitted only from process vents. These

emissions may be in either vapor or particulate form depending on the temperature of the unit operation. They are not emitted from other emission points because emissions from other emission points depend largely on evaporation of the pollutant. As metal-based compounds have very low vapor pressures, they are unlikely to be emitted in significant amounts from other emission points.

We reviewed State and other Federal regulations that apply to the area and major sources in the source categories for information to establish subcategories and control requirements for some of the emission points. For example, the new source performance standards (NSPS) for volatile organic liquid storage vessels in 40 CFR part 60, subpart Kb apply to storage tanks at some area sources. Similarly, a regulation established by the Texas Commission on Environmental Quality which requires monitoring of recirculating water in cooling tower systems, also applies to some area sources. We also reviewed standards for other source categories that would be appropriate for and transferable to operations at chemical manufacturing area sources as well. For example, we determined that management practices applicable to gasoline loading racks at gasoline distribution area sources are equally feasible for transfer operations at chemical manufacturing area sources.

D. What are the production processes, emission points, and available controls?

The chemical manufacturing industry produces a wide variety of chemicals using processes that involve numerous types of unit operations. Example operations include reaction, mixing, fermentation, extraction, distillation, crystallization, washing, filtering, drying, grinding, and calcining. Pollutants are emitted from these operations through process vents. Process vent emissions are generated from a variety of activities including equipment vessel purges with air or nitrogen, vapor displacement due to filling a vessel with liquid, gas evolution from reactions, applying a vacuum to a vessel, heating the contents of a vessel, depressurizing a vessel, and drying a solid product. The proposed rule would regulate three types of process vents: Continuous process vents; batch process vents; and metal HAP process vents. Pollutants are also emitted from five other types of equipment that are associated with or support a process: Storage tanks, cooling tower systems, equipment leaks, transfer operations, and wastewater systems. Each of the types of emission points and

potential controls are described in the following sections.

Continuous process vents. A continuous process vent is defined as the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream that meets three conditions: (1) It contains organic HAP, (2) some or all of the gas stream originates from a unit operation that operates continuously, and (3) the gas stream flow is continuous. Typical controls include add-on control devices such as thermal incinerators, condensers, and carbon adsorbers.

Batch process vents. A batch process vent is defined as a point of discharge from a single unit operation or from a common header that connects multiple unit operations through which an organic HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Specifically excluded from the proposed definition of a batch process vent are continuous process vents and any other emission points that are subject to other standards in the proposed rule (e.g., a storage tank or wastewater treatment unit), gas streams routed to a fuel gas system, and certain elephant trunk systems. Typical controls include add-on control devices such as thermal incinerators, condensers, and carbon adsorbers.

Metal HAP process vents. A metal HAP process vent is defined as the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any unit operation in chemical manufacturing operations at an affected source. If both metal HAP and organic HAP are emitted, a metal HAP process vent may also be a continuous process vent or batch process vent. Typical controls include add-on control devices that control particulate matter (PM), such as fabric filters and electrostatic precipitators.

Storage tank. A storage tank is a tank or other vessel that is used to store organic or inorganic HAP that are used in or produced by the chemical manufacturing operations, except for the following: Vessels permanently attached to motor vehicles, pressure vessels, vessels storing organic liquids that contain HAP only as impurities, wastewater storage tanks, and process tanks. Primary uses of storage tanks are to store raw materials, products, and wastes. Bottoms receivers and surge control vessels are also considered to be storage tanks. Emissions from storage tanks occur as a result of vapor displacement when the tank is being filled and as a result of vapor expansion due to diurnal temperature changes. Numerous controls are available for

storage tanks. These include the use of internal or external floating roofs, vapor balancing to the tank truck or other vessel from which the storage tank is filled, and routing emissions through a closed-vent system to a control device such as a thermal incinerator.

Cooling tower systems. Cooling towers are used to cool warm water from heat exchangers that is then recirculated to the heat exchangers. Process fluid that leaks into the recirculating water in the heat exchanger may be volatilized and emitted to the atmosphere in the cooling tower. Controls generally involve a monitoring program to identify elevated levels of organic compounds or a surrogate for the organic compounds in the recirculating water. When a leak is detected, the defect in the heat exchanger must be repaired to eliminate the leak and the emissions.

Equipment Leaks. Equipment leaks occur from pumps, the packing around valve stems in valves, flanges and connectors that are not tight, pressure relief valves, open-ended lines, and sampling connections. For pumps, valves, and connectors, controls consist of leak detection and repair (LDAR) programs in which the equipment is inspected on a specified schedule. The inspections may be either sensory-based or instrument-based. The programs also define a leak differently, but all require repair of detected leaks. Controls for other types of equipment usually involve the use of certain types of equipment. For example, open-ended lines must be capped, and pressure relief devices must be equipped with rupture disks or connected to a closed-vent system that routes releases to a control device such as a flare.

Transfer operations. Transfer operations are defined as the loading into tank trucks and rail cars of organic liquids that contain one or more organic HAP, as defined in Section 112(b) of the CAA, from a loading rack (also known as a transfer rack) at an affected source. A loading rack is the system used to fill tank trucks and rail cars at a single geographic site and includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves. One widely used emission control technique is submerged loading, which consists of either filling through a drop tube that extends from the top of the vessel being loaded to within a few inches of the bottom of the vessel or by bottom loading through a built-in fill connection near the bottom of the vessel. Another available control is vapor balancing, which routes displaced vapors from the tank truck or railcar back to the storage tank from which it is being loaded. Routing displaced

vapors through a closed-vent system to a control device is another option.

Wastewater systems. Wastewater is defined as water that contains at least one of the 76 organic HAP listed in Table 9 of 40 CFR part 63, subpart G, and is discarded from a chemical manufacturing process or control device, except for the following: (1) Stormwater from segregated sewers; (2) water from fire-fighting and deluge systems, including testing of such systems; (3) spills; (4) water from safety showers; (5) samples of a size not greater than reasonably necessary for the method of analysis that is used; (6) equipment leaks; (7) wastewater drips from procedures such as disconnecting hoses after cleaning lines; and (8) noncontact cooling water. Wastewater includes both process wastewater and maintenance wastewater. Process wastewater is wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Maintenance wastewater is wastewater that is generated by the draining of process fluid from components in a chemical manufacturing process into an individual drain system prior to or during maintenance activities. A wastewater system is the equipment in which the wastewater is conveyed and treated. Aerobic biological treatment to degrade the organic compounds is the most common type of treatment. Other types of treatment that remove organics include anaerobic biological treatment, incineration of the wastewater, and steam or air stripping followed by condensation or other techniques to recover or destroy the stripped compounds. Controls also include some form of emission suppression techniques between the discharge from the process and the treatment unit. Examples of emission suppression include water seals on individual drains, covers on junction boxes and holding or treatment tanks, and closed sewer lines. Some regulations also prohibit the discharge of multi-phase wastewater streams; these streams must be separated into a water layer and one or more organic layers by gravity separation techniques, and only the water phase may be discharged to the wastewater system.

III. Summary of the Proposed Standards

A. Do the proposed standards apply to my source?

This proposed NESHAP applies to each existing or new facility that is an

area source of HAP and has chemical manufacturing operations that process, use, produce, or generate any of the 15 chemical manufacturing urban HAP. Chemical manufacturing operations would be defined as the facility-wide collection of chemical manufacturing processing equipment and associated storage tanks, cooling tower systems, transfer operations, and wastewater systems. The chemical manufacturing operations are the affected source.

The nine chemical manufacturing area source categories include most of the source categories that are classified under NAICS 325. The proposed rule, therefore, specifies applicability based on all chemical manufacturing operations that are used to produce chemicals classified under NAICS 325 except as described below. We believe this approach is more straightforward than listing all of the processes or NAICS codes that are subject because it is a more concise list, it ensures that no processes are inadvertently left off the list, and it automatically applies to new processes developed in the future. Manufacturing operations classified by NAICS codes 325222, 325314, and 325413 are not subject to this proposal because these operations were not included in the listing of source categories as part of the Urban Strategy. The proposal does not apply to mercury cell chlor-alkali plants, chemical preparations, paint and allied products, polyvinyl chloride and copolymers production, carbon black, chemical manufacturing: chromium compounds, and acrylic and modacrylic fibers production, because those area source categories are subject to other section 112(d) NESHAP. In addition, specific manufacturing processes or chemical processes that are not subject to the proposed rule include:

(1) Manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium, and uranium;

(2) Manufacture of photographic film, paper, and plate where the material is coated with or contains chemicals;

(3) Fabricating operations (such as spinning or compressing a solid polymer into its end use); compounding operations (in which blending, melting, and resolidifying of a solid polymer product occur for the purpose of incorporating additives, colorants, or stabilizers); extrusion and drawing operations (converting an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product) are generally not subject to this proposal. Such operations are subject if

they involve processing with a HAP solvent or if an intended purpose of the operation is to remove residual HAP monomer;

(4) Research and development facilities as defined in section 112(c)(7) of the CAA;

(5) Quality assurance/quality control laboratories;

(6) Boilers and incinerators (not used to comply with emission standards in the proposed rule), chillers and other refrigeration systems, and other equipment and activities that are not directly involved (i.e., they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a product or intermediates used in production of the product are not considered chemical manufacturing operations. The above operations are not covered by this rule because they were not part of the inventory on which we based the listing for the nine area source categories at issue in this rule.

To be subject to the proposed standards, the chemical manufacturing operations also must process, use, produce, or generate any of the 15 chemical manufacturing urban HAP. If the proposed standards are applicable to a chemical manufacturing area source, the proposed standards apply to all organic HAP emissions and all metal HAP emissions from chemical manufacturing operations at the area source. We are proposing that the standards for each type of emission point apply to all of the emission points of that type in an affected source, including those that do not emit a chemical manufacturing urban HAP (e.g., an area source may have two storage tanks, one containing methanol and the other containing methylene chloride, and, under the proposed rule, both would be part of the affected source and subject to the storage tank standards).

We recognize that standards limited to the emission points that emit the chemical manufacturing urban HAP at the nine area source categories would be sufficient to satisfy the requirement in section 112(c)(3) and (k)(3)(B), that EPA regulate sufficient source categories to account for 90 percent of the urban HAP emissions. However, section 112 of the CAA does not prohibit the Agency from regulating other HAP emitted from area sources listed pursuant to section 112(c)(3). Section 112(d)(5) states that for area sources listed pursuant to section 112(c), the Administrator may, in lieu of section 112(d)(2) "MACT" standards, promulgate standards or requirements "applicable to sources"

which provide for the use of GACT or management practices "to reduce emissions of hazardous air pollutants." This provision does not limit the Agency's authority to regulating only those urban HAP emissions for which the category is needed to achieve the 90 percent requirement in section 112(c)(3).

We are proposing to apply the standards in this manner for several reasons. The management practices proposed in the rule are equally effective at controlling emissions of HAP other than the chemical manufacturing urban HAP and there is little, if any, additional cost for implementing those management practices for all emissions sources (e.g., for process vents the annual cost of the management practices is less than \$300/yr). In addition, where add-on controls are required under this rule, those controls will reduce not only emissions of the chemical manufacturing HAP, but also emissions of the organic and metal HAP that are not chemical manufacturing urban HAP. Applying the proposed standards only to the chemical manufacturing urban HAP would require the facility to speciate HAP as opposed to measuring total HAP when demonstrating compliance. Furthermore, many facilities route emissions from process vessels to common vents and it would not be practical to control only urban HAP emissions from those vents. We are also proposing to apply the standard to all HAP because many of the area sources emit a significant amount of HAP in addition to the chemical manufacturing urban HAP (for example, the nationwide ratio of total organic HAP to chemical manufacturing organic HAP at affected sources is more than 3:1), and all HAP are hazardous to human health and the environment.

We have determined that sources will not have to install different controls or implement different management practices to implement the proposed standards for all HAP and, as part of the GACT analysis, we have found that the costs of applying the proposed standards to all HAP are reasonable. For all of these reasons, we propose to apply these standards to all chemical manufacturing operations at the chemical manufacturing area source. We request comment on the environmental, cost, and economic impacts of this approach.

Controlling halogenated HAP emissions by burning in a combustion device, as the proposed rule provides, will generate hydrogen halide and halogen HAP. Several NESHAP (40 CFR part 63, subparts G, GGG, MMM, and

FFFF) require control of hydrogen halide and halogen HAP when a combustion device is used to control halogenated vent streams. The proposed standards apply to hydrogen halide and halogen HAP (i.e., hydrogen chloride, chlorine, and hydrogen fluoride), but only when they are generated in a combustion device that is used to meet a proposed standard. The proposed controls for the chemical manufacturing urban HAP generally would achieve little or no co-control of the hydrogen halide and halogen HAP. Simply converting one HAP to another does not protect human health or the environment. Therefore, these by-products of combustion are also subject to proposed standards.

B. When must I comply with the proposed standards?

Some facilities will have to design, purchase, and install add-on control equipment to meet the proposed requirements. We are therefore proposing that owners or operators of existing sources comply with all the requirements of the area source NESHAP by 3 years after the date of publication of the final rule in the **Federal Register**. A new affected source would be required to comply by the date of publication of the final rule in the **Federal Register** or upon initial startup, whichever is later.

Area sources subject to the rule would not be required to obtain a title V operating permit. Our reasons for exempting chemical manufacturing area sources from the requirement to obtain a title V permit are discussed in section IV.D of this preamble.

C. What are the proposed emissions standards?

We are proposing management practices as GACT for all process vents, storage tanks, equipment leaks, transfer operations, and cooling tower systems. For specified subcategories, we are proposing management practices and emissions limitations or other requirements as GACT for continuous process vents, batch process vents, metal HAP process vents, cooling tower systems, and storage tanks. We are proposing emission standards that consist of two treatment requirements for one subcategory of wastewater streams, and we are proposing a single treatment requirement for a second subcategory of wastewater streams. All of the proposed standards are the same for new and existing affected sources.

1. Continuous Process Vents

As explained in section IV.A, we distinguished continuous process vents

based on a total resource effectiveness (TRE) index value of 1, which we believe is a reasonable proxy for the size of the vent. Specifically, we created two subcategories for continuous process vents: Those continuous process vents with a TRE value less than or equal to one and those with a TRE greater than one. The TRE is a measure of HAP emissions and control costs and is normalized to a value of 1.0 for a cost-effectiveness of \$3,000 per ton of HAP reduction. Facilities would determine the TRE index value either at the point of discharge to the atmosphere or after the last recovery device using procedures specified in 40 CFR 63.115 of the HON.

We are proposing that owners and operators implement management practices for all continuous process vents. The management practices consist of requirements to check the integrity of the process equipment once per quarter, to repair process equipment as necessary to eliminate leaks, and to operate the process equipment with all openings or access points covered or with closure mechanisms in the closed position, except as necessary for operator access. If a leak is detected, the owner or operator would be required to repair it within 15 calendar days of detection, unless a reasonable justification for delay exists and is documented. The owner or operator must provide notification of a delay in repair in the semiannual report. These management practices are the only proposed emission requirements for the subcategory of continuous process vents with a TRE value greater than 1.

For the subcategory of continuous process vents with a TRE value less than or equal to 1, we are proposing that the owner or operator reduce emissions of organic HAP (including hydrazine) by 95 percent by weight or greater or to 20 parts per million by volume (ppmv) or less. Because flares achieve greater than 95 percent reduction, the owner or operator may reduce emissions of organic HAP by routing emissions through a closed vent system to a flare. However, the proposed rule does not allow a flare to be used to control halogenated emission streams. As an alternative to demonstrating compliance with the standards specified above, the proposed rule allows an owner or operator to comply with the alternative standard in 40 CFR part 63, subpart FFFF (i.e., the miscellaneous organic NESHAP [MON]). Under the alternative standard, an owner or operator would be required to route the process vent streams through a closed vent system to a control device that meets a specified outlet concentration and demonstrate

compliance using a continuous emission monitoring system (CEMS). For a combustion device, the proposed rule requires that organic HAP emissions be reduced to an outlet concentration of 20 ppmv measured as total organic compounds (TOC), and hydrogen halide or halogen HAP generated in the combustion device be reduced to an outlet concentration of 20 ppmv or less. For a noncombustion device, organic HAP would be reduced to an outlet concentration of 50 ppmv or less measured as total organic HAP. In the MON, this alternative is allowed for both continuous process vents and batch process vents and is equivalent to the 98 percent control requirement in the MON. The same alternative standard is in the NESHAP for pharmaceuticals production and pesticide active ingredient production (40 CFR part 63, subparts GGG and MMM).

2. Batch Process Vents

As explained in section IV.A, we considered the different sizes and types of batch process vents in chemical manufacturing operations and established subcategories based on annual emissions to reflect the combined factors. Specifically, we created two subcategories for batch process vents: Those batch process vents that emit 19,000 lb/yr or greater of organic HAP and those that emit less than 19,000 lb/yr of organic HAP. Facilities would determine annual emissions using test data or procedures in subparts GGG and FFFF of part 63 or estimating emissions based on the emissions for the worst-case batch process.

We are proposing that owners and operators implement management practices for all batch process vents. The management practices consist of requirements to check the integrity of the process equipment once per quarter, to repair process equipment as necessary to eliminate leaks, and to operate the process equipment with all openings or access points covered or with closure mechanisms in the closed position, except as necessary for operator access. If a leak is detected, the owner or operator would be required to repair it within 15 calendar days of detection, unless a reasonable justification for delay exists and is documented. The owner or operator must provide notification of a delay in repair in the semiannual report. These management practices are the only proposed emission requirements for the subcategory of batch process vents emitting less than 19,000 lb/yr of organic HAP.

In addition to the management practices applicable to both subcategories, we are proposing for the subcategory of batch process vents with total uncontrolled organic HAP emissions equal to or greater than 19,000 lb/yr that the owner or operator either: (1) Reduce the collective uncontrolled organic HAP emissions (including hydrazine) from the sum of all batch process vents within the chemical manufacturing operations by 90 percent by weight or greater or to 20 ppmv or less; (2) route emissions from batch process vents containing at least 90 percent of the uncontrolled total organic HAP through a closed vent system to a flare (except for halogenated vent streams); or (3) comply with combinations of the requirements in items 1 and 2 for different groups of batch process vents. As an alternative, the proposed rule allows an owner or operator to comply with the alternative standard as described in section III.C.1 of this preamble. These alternatives provide equivalent levels of emission control.

Facilities would estimate the sum of the typical uncontrolled organic HAP emissions for all emission episodes using equations and other procedures specified in 40 CFR part 63, subpart FFFF and the National Emission Standards for Pharmaceuticals Production (40 CFR part 63, subpart GGG). The proposed rule includes 3 alternatives to the requirement to estimate batch process vent emissions from each process. First, although actual emissions may vary from one batch to another for a given process, the proposed rule allows the owner or operator to estimate emissions for a typical batch and assume those emissions apply to each batch. Second, as an alternative to estimating emissions for a standard batch of each process, the proposed rule allows the owner or operator to determine emissions only for a typical batch in the process that has the highest emissions and assume that those emissions apply to batches in all other processes. Process knowledge, engineering assessment, or test data may be used to identify the worst case process. Third, if an owner or operator can demonstrate that organic HAP usage is less than 19,000 lb/yr and this is the only HAP in the process, then HAP emissions also must be less than 19,000 lb/yr. Thus, the proposed rule does not require an owner or operator to estimate emissions if this condition is met.

3. Metal HAP Process Vents

As explained in section IV.A, we considered the different sizes and types of metal HAP process vents in chemical

manufacturing operations and established subcategories based on annual emissions of metal HAP to reflect the combined factors. Specifically, we created two subcategories for metal HAP process vents based on a threshold level of emissions: Those metal HAP process vents that emit above the threshold as one subcategory and below the threshold as a second subcategory. We are co-proposing alternative process vent thresholds of 100 lb/yr and 400 lb/yr of metal HAP. Facilities would determine the mass metal HAP emissions rate by using process knowledge, engineering assessments, or test data.

We are proposing that owners and operators implement management practices for all metal HAP process vents. The management practices consist of requirements to check the integrity of the process equipment once per quarter, to repair process equipment as necessary to eliminate leaks, and to operate the process equipment with all openings or access points covered or with closure mechanisms in the closed position, except as necessary for operator access. If a leak is detected, the owner or operator would be required to repair it within 15 calendar days of detection, unless a reasonable justification for delay exists and is documented. The owner or operator must provide notification of a delay in repair in the semiannual report. These management practices are the only proposed emission requirements for the subcategory of metal HAP process vents emitting below the threshold (less than 100 lb/yr or 400 lb/yr of metal HAP).

In addition to the management practices applicable to both subcategories, we are proposing for the subcategory with total uncontrolled metal HAP emissions from metal HAP process vents equal to or greater than the threshold (100 lb/yr or 400 lb/yr of metal HAP) that the owner or operator reduce uncontrolled emissions of metal HAP by 95 percent by weight or greater.

To determine whether the percent reduction requirement applies, the owner or operator would be required to determine and sum the emissions from all of the metal HAP process vents. The proposed rule allows the use of process knowledge, engineering assessment, or test data to determine the mass emission rate.

4. Storage Tanks

As explained in section IV.A, we considered the different sizes of storage tanks and subcategorized on that basis. Specifically, we created two subcategories for storage tanks: Large

storage tanks are those that meet the size and maximum true vapor pressure (MTVP) thresholds for control in the NSPS for volatile organic liquid storage vessels in 40 CFR part 60, subpart Kb, and small storage tanks are those that do not meet the subpart Kb thresholds.

We are proposing that owners and operators implement management practices for all storage tanks that store organic HAP. The management practices consist of requirements to check the integrity of the storage tanks once per quarter, to repair tanks as necessary to eliminate leaks, and to operate the tanks with all openings or access points covered or with closure mechanisms in the closed position, except as necessary for operator access. If a leak is detected, the owner or operator would be required to repair it within 15 calendar days of detection, unless a reasonable justification for delay exists and is documented. The owner or operator must provide notification of a delay in repair in the semiannual report. These management practices are the only proposed emission requirements for the subcategory of small storage tanks.

In addition to the management practices applicable to both subcategories, we propose that for the subcategory of large storage tanks that owners and operators comply with the control requirements in subpart Kb. The control options in 40 CFR part 60, subpart Kb are to operate and maintain a fixed roof in combination with an internal floating roof, use an external floating roof, or to route emissions through a closed vent system to a control device that reduces organic HAP emissions by 95 percent or greater.

5. Cooling Tower Systems

We are proposing that owners and operators implement management practices for all cooling tower systems in which recirculating water is used in heat exchangers to cool process fluid that contains organic HAP. We are proposing a management practice for a subcategory of small cooling tower systems and an emission limit for a subcategory of large cooling tower systems.

For the subcategory of small cooling tower systems, those with recirculating water flow rates less than 8,000 gal/min, we are proposing that the owner or operator inspect the cooling water system quarterly for hydrocarbon odor, discolored water, or other evidence of hydrocarbons in the cooling water. In addition, the owner or operator would be required to prepare and operate in accordance with an operating and maintenance plan that describes actions to be taken in response to different

inspection results. If a leak is detected, the owner or operator would be required to repair it (or remove the leaking heat exchanger from service) within 45 calendar days of detection, unless a reasonable justification for delay exists and is documented. The owner or operator must provide notification of a delay in repair in the semiannual report.

For the subcategory of large cooling tower systems, those with recirculating water rates of 8,000 gal/min or greater, we are proposing that the owner or operator monitor the recirculating cooling water using a surrogate indicator of heat exchange system leaks as required in § 63.104(c) and (d) of the HON (40 CFR part 63, subpart F). These provisions would require the owner or operator to prepare and operate in accordance with a monitoring plan that documents the procedures that will be used to detect leaks of process fluids into the cooling water. The types of information to include in the plan would include a description of the parameter(s) to be monitored, rationale for why the selected parameter(s) will reliably indicate a leak, and the level that indicates a leak. When a leak is detected, the owner or operator would be required to repair it (or remove the leaking heat exchanger from service) within 45 calendar days of detection, unless delay of repair is allowed. Delay of repair would be allowed until the next shutdown if the owner or operator documents that emissions from shutdown for repair would cause greater emissions than estimated emissions from allowing the system to continue leaking until the scheduled shutdown.

6. Equipment Leaks

We are proposing that each owner or operator implement management practices for equipment leaks. The management practices consist of quarterly leak inspections of all equipment in organic HAP service. The term "equipment" applies to each pump, compressor, agitator, pressure relief device, sampling connection system, open ended valve or line, connector, and instrumentation system in chemical manufacturing operations. To be in organic HAP service, the equipment must either contain or contact a fluid (liquid or gas) that contains one or more of the organic HAP listed in or pursuant to section 112 of the CAA. Leak detection methods using sight, sound, and smell may be used. Under the proposed rule, repair or replacement of leaking equipment is required within 15 days after detection, or the reason for any delay of repair must be documented. The owner or

operator must provide notification of a delay in repair in the semiannual report.

7. Transfer Operations

We are proposing that each owner or operator of an affected source implement management practices for all transfer operations that involve transfer of material that contains organic HAP. We are proposing that each owner or operator implement management practices to minimize evaporation, clean up spills, and implement submerged loading. The proposed rule defines submerged loading as the use of a submerged fill pipe that discharges no more than 12 inches from the bottom of the cargo tank.

8. Wastewater Systems

We developed two subcategories of wastewater streams based on differences in the concentration of partially soluble HAP in the wastewater stream. One subcategory consists of wastewater streams with partially soluble HAP concentrations less than 10,000 parts per million by weight (ppmw), and the other consists of wastewater streams with concentrations equal to or greater than 10,000 ppmw. Partially soluble HAP are a subset of all organic HAP. They are less soluble in water than other organic HAP, and they are more easily separated from water. A list of partially soluble HAP that matches a list of partially soluble HAP in the MON is included in Table 3 of the proposed rule. The proposed rule requires an owner or operator to use any of the procedures in 40 CFR 63.144(b) of the HON to determine the partially soluble HAP concentration in each wastewater stream. Several options are allowed. For example, the owner or operator may calculate the concentration based on knowledge of the wastewater, using bench-scale or pilot-scale test data that is demonstrated to be representative of the actual wastewater, or by testing samples of the actual wastewater stream.

For both subcategories we are proposing that the owner or operator treat the wastewater onsite or discharge it to an offsite facility for treatment. In addition, for the subcategory of wastewater streams with partially soluble HAP concentrations equal to or greater than 10,000 ppmw, we are proposing that the owner or operator separate the stream into a water phase and one or more organic phases using a decanter or other equipment that operates on the principle of gravity separation. The water phase would then have to be treated as described above. The separated organic liquid may be sent back to the process or discarded as

hazardous waste. Also, liquid waste from the process that consists only of organic compounds may not be sent to the wastewater system if any of the organic compounds in the wastewater stream are partially soluble HAP.

D. What are the initial and continuous compliance requirements?

1. Continuous Process Vents

To demonstrate compliance with the management practices for continuous process vents, the owner or operator would conduct quarterly inspections during process operation to determine the integrity of the process vessels, identify and repair within 15 days any leaks, and ensure that covers are in place or closure mechanisms are in the closed position during process operation.

The proposed rule incorporates by reference the initial and continuous compliance requirements in 40 CFR part 63 subparts SS and FFFF for control devices, recovery devices, and closed-vent systems used to meet the emission limit for continuous process vents. These procedures are summarized below.

For each non-flare control device used to meet the percent reduction or outlet concentration emission limit for organic HAP emissions from continuous process vents, the owner or operator would be required to conduct a performance test to demonstrate initial compliance. The performance test would be conducted under representative operating conditions. To demonstrate continuous compliance, the owner or operator would monitor applicable operating parameters for the selected control device (including hydrogen halide and halogen HAP control devices if control of a halogenated organic HAP is achieved using a combustion device).

For each flare, the owner or operator would conduct a flare compliance assessment to demonstrate initial compliance, and continuously monitor applicable operating parameters to demonstrate continuous compliance.

Continuous monitoring of applicable operating parameters is required if a recovery device is used to maintain the TRE index value at a level greater than 1.0 and less than or equal to 4.0.

The owner or operator would inspect for and repair leaks in each closed-vent system that is used to convey a gas stream from a continuous process vent to either a final recovery device or control device. Monitoring of bypass lines to identify periods when emissions are diverted from a control device or recovery device would also be required.

Whenever a performance test is required, the owner or operator may choose to submit the results of a prior performance test to demonstrate initial compliance provided the prior test meets specified criteria. For example, the test must have been conducted within the past 5 years using the methods and procedures specified in the rule. Moreover, the owner or operator must demonstrate either that no process changes have been made since the test or that the results of the test with or without adjustments, reliably demonstrate compliance with the applicable emission standard despite process changes. Provisions are included in the proposed rule for submitting prior written notification of intent to use the previous data.

2. Batch Process Vents

To demonstrate compliance with the management practices for batch process vents, the owner or operator would conduct quarterly inspections during process operation to determine the integrity of the process vessels, identify and repair within 15 days any leaks, and ensure that covers are in place or closure mechanisms are in the closed position during process operation.

The proposed rule incorporates by reference the initial and continuous compliance requirements in 40 CFR part 63 subparts SS and FFFF for control devices and closed-vent systems used to meet an emission limit for batch process vents. These procedures are summarized below.

For each non-flare control device used to meet the percent reduction or outlet concentration emission limit for batch process vents, the owner or operator would conduct either a performance test or a design evaluation to demonstrate initial compliance. The performance test or design evaluation would be conducted under worst-case conditions according to 40 CFR 63.1257(b)(8). The results of a previous performance test may be used under the same conditions described in section III.D.1 of this preamble for a previous performance test of continuous process vents. To demonstrate continuous compliance, the owner or operator would continuously monitor applicable operating parameters for the selected control device (including hydrogen halide and halogen HAP control devices if a halogenated organic HAP is controlled using a combustion device).

For each flare, the owner or operator would conduct a flare compliance assessment to demonstrate initial compliance, and continuously monitor applicable operating parameters to demonstrate continuous compliance.

The owner or operator would inspect for and repair leaks in each closed-vent system that is used to convey a gas stream from a batch process vent to a control device. Monitoring of bypass lines to identify periods when emissions are diverted from a control device would also be required.

3. Metal HAP Process Vents

To demonstrate compliance with the management practices for metal HAP process vents, the owner or operator would conduct quarterly inspections during process operation to determine the integrity of the process vessels, identify and repair within 15 days any leaks, and ensure that covers are in place or closure mechanisms are in the closed position during process operation.

The proposed rule incorporates by reference the requirements of the NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds (40 CFR part 63, subpart NNNNNN), concerning the procedures to demonstrate initial and continuous compliance with the percent reduction option for metal HAP process vents at new affected sources. A modified version of these requirements would apply to existing affected sources as summarized below.

A performance test would be required for both new and existing affected sources to demonstrate initial compliance. Although subpart NNNNNN requires only outlet testing, this proposed rule specifies that the testing must be conducted at both the inlet and outlet of the control device to determine the percent reduction. The results of a previous performance test may be used under the same conditions described in section III.D.1 of this preamble for a previous performance test of continuous process vents.

To demonstrate continuous compliance with an emission limit, the owner or operator of a new affected source that uses a fabric filter to control metal HAP emissions would install, operate, and maintain a bag leak detection system in accordance with a site-specific monitoring plan. The proposed rule specifies that the monitoring plan must describe the operation, maintenance, quality assurance, recordkeeping, and corrective action procedures to be followed.

The owner or operator of a new affected source using any other type of control device for PM, would demonstrate continuous compliance with an emission limit by developing and operating in accordance with a site-specific monitoring plan for that type of

control device. The same requirements would apply to the owner or operator of an existing affected source using any type of control device for PM. The proposed rule specifies that the monitoring plan would list the operating parameters that will be monitored to maintain continuous compliance with the emission limit, the operating limit for each parameter, and an operation and maintenance plan for the control device and continuous monitoring system. A preventive maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance would be required as part of the operation and maintenance plan for the control device.

4. Storage Tanks

To demonstrate compliance with the management practices, the owner or operator would conduct quarterly inspections to determine the integrity of the tank, identify and repair within 15 days any leaks, and ensure that any openings or access points are covered or closed.

To demonstrate compliance with a floating roof or control device standard for storage tanks, the proposed rule requires the owner or operator to comply with procedures specified in 40 CFR part 63, subpart Kb. For example, floating roofs must meet design specifications, and the owner or operator would be required to conduct inspections, measure seal gaps, and repair defects. For a control device, the owner or operator would be required to demonstrate that the control device will achieve the required control efficiency during maximum loading conditions. The operating plan must also describe the parameter or parameters to be monitored to demonstrate continuous compliance.

5. Cooling Tower Systems

To demonstrate initial compliance with management practices for cooling tower systems with recirculation rates less than 8,000 gal/min (i.e., inspect the cooling water quarterly for evidence of hydrocarbons in the cooling water), the owner or operator would be required to prepare an operating and maintenance plan that describes actions to be taken in response to different inspection results. If a leak is identified, the owner or operator is required to fix it within 45 days. Records documenting the occurrence of each inspection, the findings, and any actions taken in response to those findings would demonstrate ongoing compliance.

To demonstrate initial compliance with the management practices for

cooling tower systems with recirculation rates equal to or greater than 8,000 gal/min (i.e., monitor for surrogate indicators of leaks), the proposed rule requires the owner or operator to develop a site-specific monitoring plan. The plan would include a description of the parameter or condition to be monitored and explain how the monitoring will reliably indicate the presence of leaks. To demonstrate continuous compliance, the owner or operator would conduct monitoring at least every calendar quarter and fix leaks within 45 days of detection, unless the owner or operator meets specified conditions under which delay of repair is allowed. The plan would not need to be submitted to the Administrator for approval, but the proposed rule requires that the plan be revised any time a leak is identified by means other than those in the plan and could not be detected by the procedures described in the plan. Except for the monitoring frequency in the first six months after the compliance date, the initial and continuous compliance requirements in the proposed rule are the same as the provisions of § 63.104(c) through (e) of the HON (40 CFR part 63, subpart F).

6. Equipment Leaks

To demonstrate compliance with the requirement to conduct quarterly inspections for equipment leaks, the owner or operator would be required to document the date and results of each inspection in a log book. The number and location of any leaks, the date of repair, and reasons for any delay of repair beyond 15 calendar days after detection of the leak also would be recorded in the log.

7. Transfer Operations

To demonstrate compliance with standards for transfer operations, the owner or operator would document that the transfer rack is designed to use top loading with a drop tube that extends to within 12 inches of the bottom of the vessel being loaded and/or that it can fill tank trucks and railcars by bottom loading. Alternatively, the owner or operator would document that emissions from transfer operations are controlled by vapor balancing back to the storage tank from which the tank truck or railcar is loaded or that emissions are routed through a closed-vent system to a control device.

8. Wastewater Systems

Compliance with the standard requiring treatment of process and maintenance wastewater is a requirement to provide notice of any

deviation from this requirement in the semiannual compliance reports. For wastewater streams that contain partially soluble HAP at concentrations equal to or greater than 10,000 ppmw, the owner or operator would be required to maintain records to demonstrate that the organic and water phases have been separated before discharging the water phase for treatment and document the disposition of the organic phase.

E. What are the notification, recordkeeping, and reporting requirements?

1. Notifications and Reports

The owner or operator would be required to comply with all of the NESHAP General Provisions (40 CFR part 63, subpart A), for notifications; startup, shutdown, and malfunction (SSM) plans and reports; and reporting. If performance tests are required under the proposed rule, then the notification and reporting requirements for performance tests in the General Provisions would also apply. We have identified in Table 4 to the proposed NESHAP the General Provisions of 40 CFR part 63 applicable to affected sources. An additional notification for the use of a previous performance test to demonstrate compliance with the applicable emission limit for batch process vents, continuous process vents, or metal HAP process vents would also be required.

Each owner or operator would be required to submit a notification of compliance status report, as required by § 63.9(h) of the General Provisions. Reporting requirements incorporated by reference may specify additional information to include in the notification of compliance status report. Finally, the proposed rule requires the owner or operator to include in the notification of compliance status report certifications of compliance with rule requirements.

Semiannual compliance reports, as required by § 63.10(e)(3) of subpart A, would be required only for semiannual reporting periods when a deviation from any of the requirements in the rule occurred; the delay of repair provisions were invoked for heat exchangers in a cooling tower system; there is a delay of repair for an equipment leak, process vessel leak, storage tank leak, or leak from a small cooling tower; or any process changes occurred and compliance certifications were reevaluated.

2. Recordkeeping

The proposed rule requires records to demonstrate compliance with each

management practice, emissions control requirement or other standard. These recordkeeping requirements are specified either directly in 40 CFR part 63, subpart VVVVVV, in the General Provisions to 40 CFR part 63, or other rules in which provisions have been incorporated by reference. These other rules include 40 CFR part 63 subpart F (cooling towers), subpart G (wastewater), subpart SS (continuous process vents, batch process vents, and closed vent systems), subpart GGG (alternative standard), subpart FFFF (alternative standard), and subpart NNNNNN (metal HAP process vents). In addition, the proposed rule incorporates by reference the recordkeeping requirements in 40 CFR part 60, subpart Kb (storage tanks).

Records for management practices applicable for all process vents must be maintained. Specifically, the owner or operator must keep records of the dates and the results of each inspection and the dates of equipment repairs.

The owner or operator would be required to keep records of each calculation that shows the TRE for a continuous process vent is greater than 1.0. This requirement would apply to both initial calculations and calculations after process or operational changes. Records of either continuously monitored parameter data or CEMS data (if complying with the alternative standard) would be required for a control device or a recovery device if a recovery device is used to maintain the TRE between 1.0 and 4.0.

Each owner and operator of batch process vents would be required to keep a record of the initial calculation of either the total annual emissions from batch process vents or the total annual HAP usage that is used to determine the applicable subcategory. If emissions are calculated, the proposed rule requires the owner or operator to keep records of the initial estimates of typical emissions per batch for each process and to track the number of batches of each process operated per month. If the applicable subcategory is determined based on HAP usage, then the proposed rule requires the owner or operator to track the HAP usage per month. Other information that the owner or operator would be required to record includes: (1) Revised estimates of the collective emissions from all batch process vents in the chemical manufacturing operations if process changes occur (or revised estimates of the HAP usage, if applicable); and (2) the information and procedures used to identify the worst-case process if the owner or operator elects to estimate emissions for all batch

process vents based on the emissions for the worst case process.

Each owner or operator of metal HAP process vents would be required to keep records of the initial calculation of estimated metal HAP annual emissions from all metal process vents. The owner or operator of each affected source that is subject to the emission limit for metal HAP emissions would be required to keep a current copy of the monitoring plan. If a fabric filter is used to meet the emission limit for metal HAP emissions at a new affected source, the owner or operator would be required to keep records of the bag leak detection system output, adjustments to the bag leak detection system, and information related to alarms and corrective action. If a control device other than a fabric filter is used at a new affected source to meet the emission limit for metal HAP emissions, then the owner or operator would be required to record continuously monitored operating parameters in accordance with the site-specific monitoring plan. The proposed rule also requires the owner of an existing source that is subject to the emission limit for metal HAP to keep records of continuously monitored operating parameters in accordance with the site-specific monitoring plan.

If an owner or operator is required to control a large storage tank in accordance with 40 CFR part 60, subpart Kb, the owner or operator would keep records related to the size of the tank and/or type of material stored for each storage tank. In addition, if an internal floating roof is installed to meet the standard, the owner or operator would maintain records of each inspection of the roof and seals. If an external floating roof is used to meet the standard, the owner or operator would maintain records of seal gap measurements. If emissions are routed through a closed vent system to a non-flare control device, the owner or operator would maintain records of monitored operating parameters. If the control device is a flare, records of all periods during which the flare pilot flame is absent would be required. For large and small storage tanks, records for management practices must be maintained. Specifically, the owner or operator must keep records of the dates and the results of each inspection and the dates of equipment repairs.

To comply with the surrogate indicator monitoring standard for large cooling towers, the proposed rule requires the owner or operator to keep records of the monitoring data and information related to the detection and repair of leaks. Maintaining a copy of the monitoring plan would also be

required. For small cooling towers, facilities must inspect the cooling tower water for evidence of the presence of hydrocarbons and record in a log book the date and results of each quarterly inspection, including description of leak; reasons for any delay of repair; and the date each leak is repaired.

Each owner or operator with equipment in organic HAP service would be required to record in a log book the date and results of each quarterly inspection, including the number of leaks and their locations; reasons for any delay of repair beyond 15 days; and the date each leak is repaired.

Each owner or operator would be required to keep records identifying all wastewater streams with total partially soluble HAP concentrations greater than 10,000 ppmw and the disposition of all organic phases generated in decanters or other separation equipment.

All facilities must keep records of any deviations from the requirements in the rule, and these records must be included in the compliance report for the semiannual period in which the deviation occurred.

Typically, records would be retained for at least 5 years, but records of storage tank dimensions and capacity would be retained for the life of the affected source. In addition, monitoring plans, operating and maintenance plans, and other plans would be updated as necessary and kept for as long as they are still current.

IV. Rationale for This Proposed Rule

A. How did we subcategorize emission sources?

As part of the development of these proposed standards, we considered whether there were differences in processes, sizes, or other factors affecting emissions that would warrant subcategorization. Under section 112(d)(1) of the CAA, EPA "may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards * * *." We explain below in detail our proposed subcategorizations for six of the eight types of emission points at chemical manufacturing area sources. We are proposing a single subcategory for both equipment leaks and transfer operations.

Continuous Process Vents. In numerous previous NSPS and NESHAP (40 CFR part 60 subparts III, NNN, and RRR, and 40 CFR part 63 subpart G) rulemakings we have used the TRE equal to 1.0 as a basis for distinguishing continuous process vents. The TRE combines the effect of HAP emission

rate, HAP heating value, and emission stream flow rate into a single criterion that is easier to use than all of the individual parameters. We determined from our review of the MON database that continuous process vents with low TRE values tend to have both higher emission stream flow rates and higher emission rates than continuous process vents with higher TREs. Increased flow from a vent generally corresponds with increased size of the unit operation and increased production rate. For these reasons, we think that the TRE value provides a reasonable estimate of the size of continuous process units at chemical manufacturing area sources.

After determining that the TRE value provides a reasonable indicator of size, we reviewed the data to determine the appropriate TRE value to propose to distinguish large and small continuous process vents. We evaluated the impacts of requiring all continuous process vents to operate add-on controls such as flares or condensers. We also considered the impacts of requiring controls for continuous process vents with different TRE values. We concluded that the control cost increased at a significantly higher rate than the emissions reductions the higher the TRE value. We also considered the TRE values at which the various MACT and NSPS determine applicability. This is relevant to the size of the continuous process vents because MACT standards apply to major sources and NSPS standards may consider size in determining applicability. We then considered the costs of control for the different TRE values in other standards. For example, we determined that the HON TRE value of 1 has a cost-effectiveness of approximately \$3000/ton of HAP removed and that the MON TRE value of 1.9 has a cost-effectiveness of \$7400/ton of HAP removed. In light of the relative emissions reductions and costs for the various thresholds, we determined that the TRE value of 1 was appropriate threshold to distinguish between large and small continuous process vents at chemical manufacturing area source.

For all the reasons above, we are proposing to develop two subcategories for continuous process vents based on differences in TRE values. We are proposing this because TRE value provides a reasonable basis on which to differentiate the size of continuous process vents. One subcategory is for continuous process vents with a TRE value less than or equal to 1.0, and the other is for continuous process vents with a TRE value greater than 1.0. We solicit comments on whether additional characteristics of continuous process vents would support alternative

subcategories based on size, class or type.

Batch Process Vents. We determined after review of information for batch process vents that many of the facilities with the highest organic HAP emissions are emitting methylene chloride. Many of these facilities are also emitting other HAP such as methanol, hexane, and toluene. All of these HAP are typically used as solvents. In addition, as part of various NESHAP rulemakings (40 CFR part 63, subparts GGG, MMM, and FFFF), we determined that processes using HAP as solvents generally have emissions much higher than other processes that use HAP as a reactant or generate HAP as a byproduct of reaction. This is the case because process vent emissions are proportional to HAP concentration in the vent stream, and the high vapor pressure solvents result in a high concentration of HAP in the gas phase. The high-volume use of solvents also results in higher emissions because of displacement losses.

Another factor that affects the emissions level is the production rate. For chemicals manufactured using batch processes, production rate is measured by number of batches. The proposed rule references standard equations for calculating HAP emissions from unit operations typically used in batch chemical processing. The annual emissions from manufacturing a chemical using batch processes is equal to the emissions from a standard batch cycle multiplied by the number of batches run in a year.

Based on this analysis, we have determined that operations where solvent use constitutes the primary source of HAP emissions and the number of batches at affected facilities is high, there are higher organic HAP emissions. We have concluded that these factors relating to the type of operation (high solvent use) and size of operation (based on number of batches) provide a reasonable basis for subcategorization. We considered whether we should combine these factors into a formula for defining the subcategories, but given the various variables at issue, we determined such an approach was too complex. As an alternative, we evaluated the sources in the category and determined that annual emissions rate provides a means of considering the factors discussed above. Also, as discussed above in regard to continuous process vents, we considered the relative emissions reductions and costs for the area sources in the category in determining the appropriate emissions level at which to subcategorize the batch process vents.

Specifically, we propose that facilities with organic HAP emissions greater than 19,000 lb/yr from batch process vents tend to have both high solvent use and a large number of batches. We are therefore proposing two subcategories based on the difference in annual emissions, one subcategory is for batch process vents with emissions equal to or greater than 19,000 lb/yr, and the other is for batch process vents with emissions less than 19,000 lb/yr. We solicit comments on our proposed subcategorization and whether additional characteristics of batch process vents would support alternative subcategories based on size, class or type.

Metal HAP Process Vents. In our review of data for metal HAP process vents, we determined that the level of metal HAP emissions from the vents is a function of the purpose for which the metal HAP is present in the process. Specifically, emissions varied according to whether the metal HAPs were intended to be incorporated into the product of the chemical manufacturing process. For products that incorporate the metal HAP (e.g., manganese dioxide, inorganic pigments, catalysts), emissions of metal HAP are generally larger; conversely, the metal HAP emissions tend to be smaller when the metal HAP is present because it is from impurities introduced with raw materials or products of combustion. However, we have identified some vents that emit larger amounts of metal HAP, even though the metal HAP is not incorporated into the final product. These facilities are likely to emit more metal HAP because of the large size of the facility or because the facility is using raw materials and/or fuel with higher levels of metal HAP impurities.

For these reasons, we are not subcategorizing metal HAP process vents solely on the basis of whether or not the processes are the type that incorporate metal HAP into the final product, as that would not account for the facilities that do not incorporate the metal HAP into the product, but that are large facilities and thus have higher metal HAP emissions, or those that use raw materials and fuel that have a higher metal HAP content. We determined that it was appropriate to base the subcategory on the amount of emissions of metal HAP from the process vents as a proxy for the type and size of the vent. In determining the appropriate emissions level, we considered relative emissions reductions and costs to the affected area sources.

We are co-proposing two subcategories for metal HAP process

vents based on either an emission level of 100 lb/yr or an emission level of 400 lb/yr. We think that at either level the proposed subcategorization accounts for the purpose for which the metal HAP emissions are present in the metal HAP process vents, the size of the facilities that incorporate metal HAP into the product, the size of facilities that do not incorporate metal into the final product, and the facilities that do not incorporate the metal HAP into the product but use raw materials or fuels that have high metal HAP content. By considering all these factors in our subcategorization determination and also the relative emissions reductions and cost of controls, we believe that we have developed a reasonable basis on which to subcategorize metal HAP process vents. We solicit comments, along with supporting documentation, on the co-proposed subcategories based on either 100 lb/yr or 400 lb/yr and whether additional characteristics of metal HAP process vents would support alternative subcategories based on size, class or type.

Storage tanks. In our review for storage tanks we determined that the NSPS for volatile organic liquid storage vessels in 40 CFR part 60, subpart Kb applies to storage tanks at area sources. The NSPS applies to storage tanks that are larger than 40,000 gallons and store liquid with an MTVP greater than 0.75 pounds per square inch absolute (psia). It also applies to storage tanks that have a capacity greater than 20,000 gallons and store liquid with a MTVP greater than 4.0 psia. We determined that tanks meeting the applicability criteria in subpart Kb are large storage tanks and tanks not meeting those applicability thresholds are small tanks. Therefore, we are proposing two subcategories for storage tanks, one for large storage tanks, which are those that exceed the NSPS capacity and MTVP limits in subpart Kb, and one for small storage tanks, which are those that do not exceed those limits. We solicit comment on our subcategorization determination and whether there are other means to differentiate among storage tanks that would support alternative subcategories based on size, type or class.

Cooling towers. In our review of information for cooling tower systems we determined that certain counties in the State of Texas require continuous monitoring of the total strippable VOC concentration and water flow at the inlet of each cooling tower with a design recirculation rate greater than or equal to 8,000 gal/min. This recirculation rate is representative of typical large size cooling towers for the chemical manufacturing industry. Smaller cooling

towers are those with a design recirculation rate less than 8,000 gal/min. Therefore, we are proposing two subcategories for cooling tower systems based on the size of the cooling towers and using the threshold in the Texas requirement as the basis for differentiating among large and small cooling towers. We solicit comment on our proposed subcategorization and whether there are other means to differentiate among cooling towers that would support alternative subcategories based on size, type or class.

Wastewater systems. In our review of information for wastewater systems, we determined that the reported solubilities, the concentration at which the solute no longer dissolves in water, of many of the chemical manufacturing organic urban HAP are approximately 10,000 ppmw. Thus, wastewater streams with concentrations above this level would separate into organic and water phases if allowed to settle. The pharmaceuticals production MACT standard, 40 CFR part 63, subpart GGG prohibits the discharge of multi-phase wastewater streams to wastewater treatment systems, and this and other MACT standards prohibit the discharge of streams that contain organic HAP at concentrations greater than 10,000 ppmw without meeting the maximum control standards in the rule. Because organic HAP in wastewater may exist as a separate phase we consider this type of wastewater stream different than an aqueous stream. We are proposing two subcategories based on the 10,000 ppmw concentration of organic HAP, which is the level the organic HAP generally ceases to dissolve in water. We solicit comment on our proposed subcategorization and whether there are other means to differentiate among wastewater systems that would support alternative subcategories based on size, type or class.

B. How did we determine GACT?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for eight types of emission points at nine area source chemical manufacturing source categories. As noted in section II of this preamble, the statute allows EPA to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

The information used to determine the proposed GACT standards is derived

from existing regulations that apply to some chemical manufacturing area sources, facilities in other area source categories, and chemical manufacturing major sources; permits and other sources of information about control technologies and management practices

that represent current industry practice; and information regarding control technologies used at chemical manufacturing major sources. We also considered costs and economic impacts in determining GACT.

We explain below in detail our proposed GACT determinations for each

of the emission points at chemical manufacturing area sources. Table 1 of this preamble summarizes the proposed GACT standard for each subcategory and emission point. We request comment on all of the proposed GACT determinations.

TABLE 1—SUMMARY OF PROPOSED GACT FOR CHEMICAL MANUFACTURING AREA SOURCES

Emission point	Subcategory	Proposed GACT
Continuous process vents ...	TRE ≤1.0 and TRE >1.0	Management practices. Use control device that reduces organic HAP by ≥95 percent.
	TRE ≤1.0	
Batch process vents	Organic HAP emissions from all batch process vents <19,000 lb/yr and ≥19,000 lb/yr.	Management practices. Use control device that reduces organic HAP by ≥90 percent.
	Organic HAP emissions from all batch process vents ≥19,000 lb/yr.	
Metal HAP process vents	All metal HAP emissions	Management practices. Use control device that reduces metal HAP emissions by ≥95 percent.
	Metal HAP emissions ≥100 (or 400) lb/yr	
Storage tanks	Tank size or MTVP of stored material less than thresholds for control in 40 CFR part 60, subpart Kb or tank size and MTVP at or above thresholds.	Management practices. Control in accordance with 40 CFR part 63, subpart Kb.
	Both tank size and MTVP of stored material at or above thresholds in 40 CFR part 60, subpart Kb.	
Cooling tower systems	Cooling water recirculation rate <8,000 gal/min	Management practices. Surrogate monitoring for leaks.
	Cooling water recirculation rate ≥8,000 gal/min	
Equipment leaks	All	Quarterly inspections for leaks and repair of equipment found to be leaking.
Transfer operations	All	Submerged loading and other management practices.
Wastewater systems	Wastewater streams with PSHAP concentrations <10,000 ppmw and ≥10,000 ppmw.	Treatment. Use gravity separation device to separate organic and water layers, and treat the water layer.
	Wastewater streams with PSHAP concentrations ≥10,000 ppmw.	

1. GACT for Organic HAP Process Vents

In evaluating GACT options, we found that several facilities have incorporated Federally enforceable provisions in their operating permits in order to obtain synthetic minor status for HAP emissions. Many of these facilities are reducing organic HAP emissions from process vents by routing emissions to air pollution control devices such as combustion devices, condensers, and carbon adsorbers. These types of control devices are generally available technology because they are being used by many facilities in the nine source categories at issue to control organic HAP emissions. These controls are also used to reduce emissions from process vents in processes at other similar area sources. Furthermore, such controls would be required for some of these processes if they were operated at major sources where the emission characteristics exceed the thresholds for control in the applicable MACT standards.

Moreover, various federal and state regulations require organic HAP emission reductions from process vents between approximately 90 percent and 98 percent. For example, several states

require a 90 percent reduction from certain large process vents at pharmaceutical production facilities. The pesticide active ingredient production NESHAP (40 CFR part 63, subpart MMM) requires a 90 percent reduction from most process vents. Numerous MACT rules require 98 percent reductions of organic HAP from process vents. Some MACT standards specify an intermediate emission limit based on reducing emissions by 95 percent. Although not a regulation, the Alternative Control Techniques Document for Batch Processes (see docket EPA-HQ-OAR-2008-0334) identifies 90 percent reduction as an appropriate reduction for a range of process vent characteristics.

A reduction of at least 98 percent is typically achievable using combustion devices such as thermal incinerators. A thermal incinerator would more than meet a 90 percent reduction requirement, and for some emission streams it is less costly than other types of control devices. A 90 percent or 95 percent reduction, however, can also be met using other types of control devices such as condensers. The above discussion focuses on the types of add-on controls that are available for use on

organic process vents. In separate sections below, we discuss our evaluation of GACT for continuous and batch process vents. That discussion includes an evaluation of the costs associated with different percent emission reduction requirements.

In addition to emission limit requirements, we found that several States require pharmaceutical facilities to enclose certain types of equipment, except when operator access is needed for sampling, maintenance, or inspections. We also understand that some facilities inspect process equipment to check for leaks. We have no reason to believe that it would be infeasible for all chemical manufacturing area sources to operate equipment only when closed and conduct periodic checks for leaks. Therefore we evaluated the cost of the following management practices: (1) Cover all process tanks and mixing vessels during operation, (2) maintain covers in the closed position on all openings and access points in other process vessels, (3) conduct quarterly inspections to check for leaks from the process vessels and determine the integrity of the process vessels and ensure that covers are being used as

specified in items 1 and 2, and (4) repair within 15 days any leaks in the process equipment. These management practices could be implemented by facilities with both batch process vent subcategories and both continuous process vent subcategories. Costs to implement such management practices are estimated to be approximately \$280/yr for each affected facility.

Continuous process vents. As part of our GACT analysis for the two subcategories of continuous process vents, we evaluated the costs of using add-on control devices to achieve a 95 percent reduction of organic HAP emissions from continuous process vents. We estimated that two facilities in the subcategory with a TRE index value less than or equal to 1.0 are not already achieving reduction comparable to this emission limit. Based on a range of emission stream characteristics, a condenser and a thermal incinerator were each determined to be the least costly control device for one facility. The average cost-effectiveness of control was estimated at about \$3,000/ton of HAP removed, which is consistent with cost-effectiveness for standards based on a TRE of 1. Because this cost is reasonable, we also evaluated the cost of a 98 percent reduction option. However, sources already implementing controls may need to install combustion devices to achieve 98 percent emissions reduction. We could not estimate the number of these controlled sources and baseline emissions, but the incremental cost-effectiveness for implementing controls to meet 98 percent relative to installing controls to meet the 95 percent reduction option is nearly \$90,000/ton.

We also evaluated the impacts of a 95 percent reduction emission limit for facilities in the subcategory with TRE index values greater than 1.0. The mix of control devices used would be the same as for facilities in the other subcategory, but the average cost-effectiveness of this option would be about \$30,000/ton of HAP removed. Because this cost is unreasonable, we did not evaluate the cost of a more stringent 98 percent reduction option for this subcategory.

Based on the generally available controls and management practices and the estimated costs, we are proposing that GACT be different for the two subcategories. For the subcategory of facilities with TRE index values less than or equal to 1.0, we are proposing that GACT consists of both management practices as described above and controls to meet a 95 percent reduction emission limit because the costs for both of these options were determined to be

reasonable. We have determined that controls to meet a more stringent 98 percent reduction emission limit do not represent GACT because the costs were determined to be unreasonable. For the subcategory of facilities with TRE index values greater than 1.0, we are proposing that GACT consists only of the management practices described above because the cost of other generally available controls to reduce emissions were determined to be unreasonable.

Batch process vents. As part of our GACT analysis for the two subcategories of batch process vents, we evaluated the costs to use add-on control devices to reduce organic HAP emissions from batch process vents by 90 percent. We estimated that four facilities in the subcategory with emissions equal to or greater than 19,000 lb/yr are not already using controls that achieve this reduction. We estimated that the flow of the emission streams at these facilities would be relatively low and the HAP concentration relatively high so that condensers would be the least costly control device. The cost-effectiveness of control would be about \$2,300/ton of HAP removed. Because this cost is reasonable, we also evaluated the cost of a 98 percent reduction option. To meet the 98 percent control level, a facility would likely need to install a combustion device. Because we could not estimate the types of controls at sources or the number of sources that would have to install completely new controls to meet this standard, we estimated the incremental cost of a 98 percent control level relative to a 90 percent control level. That incremental cost-effectiveness is estimated at nearly \$100,000/ton.

We also examined the cost of a 90 percent reduction emission limit for facilities in the subcategory with estimated uncontrolled emissions from batch process vents less than 19,000 lb/yr. We estimated that this subcategory includes 107 facilities with emission streams that span a range of flows and concentrations. Condensers would be the least costly control device for some facilities, and incinerators would be the least costly control device for other facilities. The average cost-effectiveness of control for these facilities is estimated at about \$25,000/ton of HAP removed. Because this cost is unreasonable, we did not evaluate the cost of a more stringent 98 percent reduction option for this subcategory.

Based on the generally available controls and management practices and the estimated costs, we are proposing that GACT be different for the two subcategories. For the subcategory of

facilities with batch process vent emissions equal to or greater than 19,000 lb/yr we are proposing that GACT consists of both management practices as described above and a 90 percent reduction emission limit because the costs for both of these options were determined to be reasonable. We are proposing that a more stringent 98 percent reduction emission limit does not represent GACT because the costs were determined to be unreasonable. For the subcategory of facilities with batch process vent emissions less than 19,000 lb/yr, we are proposing that GACT consists only of management practices because the costs of other available controls to reduce emissions were determined to be unreasonable.

2. GACT for Metal HAP Process Vents

The metal HAP emissions tend to be PM emissions, and many processes emit other PM along with the HAP metals compounds. As part of our GACT analysis we determined that the same management practices described in section IV.B.1 for organic process vents are equally feasible and available for both subcategories of metal HAP process vents. We also estimated that the costs are the same as for organic process vents (\$280/yr per facility).

Fabric filters and other types of control devices are widely used to control PM emissions, including PM containing metal compounds. Such controls are generally available, and reductions are at least 95 percent. Over 90 percent of the PM emissions from area sources are in the form of fine particulate matter, and EPA studies have found that fine particles continue to be a significant source of health risks in many urban areas.

As part of our GACT analysis, we evaluated the costs of using add-on control devices and achieving a 95 percent metal HAP emission reduction for the subcategory with uncontrolled metal HAP emissions of 100 lb/yr or greater and 400 lb/yr and greater. We estimated that 55 facilities are in the subcategory defined as 100 lb/yr or greater and 30 facilities are affected when the subcategory is defined as 400 lb/yr or greater. Table 2 of this preamble summarizes the impacts of the proposed requirements. The cost-effectiveness of control to the 95 percent reduction of emissions would be about \$70,000/ton of HAP metal compounds removed and \$5,000/ton of PM if the subcategory is defined as 100 lb/yr or greater. The cost-effectiveness would be about \$40,000/ton of HAP metal compounds removed and \$3,000/ton of PM if the subcategory is defined as 400

lb/yr or greater. The costs for both co-proposals are considered acceptable and are in line with the cost-effectiveness for PM in other rules, including rules that require control of PM from other area

sources and mobile sources. We believe that these area and mobile source rules provide a reasonable benchmark for PM cost-effectiveness. We did not consider a control option more stringent than 95

percent reduction because the use of add-on control devices is the most effective control technique available.

TABLE 2—IMPACTS OF CONTROL OPTIONS FOR METAL HAP PROCESS VENTS

Uncontrolled emissions cutoff for control, lb/yr	Total capital cost (1,000\$)	Total annual cost (1,000\$/yr)	Emission reduction (tpy)		Cost effectiveness (1,000 \$/ton HAP [PM])	
			HAP	PM	Relative to baseline	Incremental
400	0.7	1.7	41	570	41 [2.9]	
100	1.3	3.0	44	610	69 [4.9]	430 [31]

We also evaluated the cost of using the same types of control devices to achieve a 95 percent metal HAP emission reduction at facilities in the subcategory with uncontrolled metal HAP emissions less than 100 lb/yr. We estimated that 119 facilities are in this subcategory, and the cost-effectiveness of control would be about \$7 million/ton of HAP metal compounds removed and \$0.5 million/ton of PM removed. These costs are considered unacceptable.

Based on the generally available controls and management practices and the estimated costs, we are proposing that GACT be different for the two subcategories. For the subcategory of facilities with uncontrolled HAP metal emissions equal to or greater than the threshold (100 lb/yr or 400 lb/yr), we are proposing GACT to be both management practices as described above and a 95 percent reduction emission limit because the costs for both of these options were judged to be acceptable. For the subcategory of facilities with uncontrolled HAP metal emissions less than the threshold (100 lb/yr or 400 lb/yr), we are proposing that GACT consists only of management practices because the cost of other generally available controls to reduce emissions were determined to be unreasonable.

3. GACT for Storage Tanks

Chemical manufacturing area sources that constructed, reconstructed, or modified certain storage tanks since 1984 have been subject to the NSPS for storage vessels in 40 CFR part 60, subpart Kb. The NSPS requires that each storage tank that has a capacity greater than 20,000 gallons and is used to store volatile organic liquid that has a MTVP greater than 4.0 psia (or greater than 0.75 psia for tanks larger than 40,000 gallons) be equipped with an internal or external floating roof, or that the displaced vapors be routed to a control device that reduces emissions by at least

95 percent. The number of storage tanks at area sources that exceed the subpart Kb size and MTVP thresholds and are not already subject to these NSPS is estimated to be 5. In this rule, we refer to these storage tanks as large tanks. The average annual cost for complying with the above-noted requirements is estimated at \$3,000/yr, and the average cost-effectiveness is estimated to be \$2,800/ton of HAP controlled. We did not consider control levels of 98 percent. The costs for the control required in subpart Kb are based on floating roof control technology. With the low emissions from storage tanks relative to process vents, the incremental cost-effectiveness between 95 and 98 percent would be worse than for process vents and very unreasonable when comparing the cost of floating roofs to the cost of combustion control.

As part of the GACT analysis, we also considered applying the subpart Kb standards to the small tank subcategory of storage tanks (i.e., those that do not meet the subpart Kb size and MTVP thresholds for control). Floating roofs are not available for small or horizontal tanks, therefore, floating roofs are not generally available for such tanks. The cost of requiring add on controls for storage tanks is considered unreasonable for storage tanks that do not meet the size and MTVP thresholds. We reached the same conclusion in the rulemaking analyses for all of the NESHAP for major sources in various chemical manufacturing source categories. For example, the cost-effectiveness of MON standards for small tanks (10,000 gallons) storing material with a MTVP of 1 psia, was estimated at approximately \$8,000/ton of HAP removed. The size and MTVP thresholds vary in the NESHAP as a result of industry-specific MACT floor determinations, but in each case the costs to apply controls to storage tanks that do not meet the subpart Kb thresholds were determined to be

unreasonable. We have no reason to believe that the results would be different for area sources.

In addition to emission limits like those in subpart Kb, we also considered generally available management practices for storage tanks. We understand that it is common practice for facilities to periodically inspect storage tanks to ensure that the structure is sound and liquid is not leaking from the tank. In addition, good operating practice dictates that all openings and access points on storage tanks will be covered or closure mechanisms will be in the closed position when liquid is in the tank, except when operator access is needed. During inspections for leaks, operators can also check that all covers and closure mechanisms are in place. The owner or operator would also be required to repair within 15 days any leaks in the process equipment. The cost of these management practices per facility is estimated at \$280/yr.

In conclusion, for the subcategory of large storage tanks (i.e., those that exceed the size and MTVP thresholds in subpart Kb), we are proposing GACT to be: (1) Management practices consisting of quarterly inspections for leaks and repairing leak within 15 days, minimizing and promptly cleaning up spills, and ensuring that all openings and access points are closed for all storage tanks; and (2) each storage tank must be equipped with an internal or external floating roof, or the displaced vapors must be routed to a control device that reduces emissions by at least 95 percent. Costs for these control techniques were determined to be reasonable, but costs for more stringent controls were determined to be unreasonable. For the subcategory of small storage tanks (i.e., those that do not meet the size and MTVP thresholds in subpart Kb), we are proposing GACT to be the same management practices that are part of GACT for the large storage tank subcategory. These costs were determined to be reasonable.

However, as noted above, we concluded that the costs for meeting the storage tank controls required by subpart Kb were unreasonable.

4. GACT for Cooling Tower Systems

In evaluating GACT options, we found permits for three petroleum refineries (1 in California, 1 in Indiana, and 1 in Illinois) that are required to conduct daily or weekly visual inspections for evidence of hydrocarbons in cooling tower recirculating water. Determination of other parameters such as the chlorine content and/or total dissolved solids is also required periodically. Required actions in response to finding hydrocarbons in the water vary among the four facilities. One facility is required to take remedial action to correct the problem. The second facility is required to conduct VOC sampling and estimate the VOC emissions; if emissions are estimated to exceed 5 tons/yr, then the facility must apply for a cooling tower permit. The third facility must develop and operate in accordance with a site-specific checklist of steps to take if the inspection parameters indicate the presence of a leak. Although the three facilities are petroleum refineries, the inspection procedures that they conduct are management practices that could be implemented by chemical manufacturing area sources. Therefore, we are proposing the following management practices for small cooling tower systems at sources affected by this proposed rule: (1) Development of a site-specific plan that describes the characteristics that the owner or operator will consider evidence of process fluid leaks into the cooling water and the actions to be taken in response to finding such conditions; (2) quarterly inspections in accordance with the plan for evidence of leaks; and (3) keeping a log documenting the inspection dates, findings, and actions taken. We estimated the cost of this option at \$800/yr per facility.

We also reviewed State and Federal rules for emission standards that apply to cooling tower systems at area sources or that would be technically feasible for area sources. On the Federal side, SOCOMI sources that are subject to the HON must monitor either surrogate indicators of a leak or monitor the water for one or more HAP or VOC that, if present, would indicate a leak. In the HON, if surrogate indicators are to be monitored, the owner or operator must prepare a monitoring plan that documents the procedures to be used, defines the parameter(s) or condition to be monitored, explains why the

parameter(s) or condition to be monitored reliably indicates a leak, and specifies the level that constitutes a leak. Alternatively, if the owner or operator elects to monitor directly for HAP or VOC, the HON specifies sampling and analysis procedures, including the sampling locations and frequency, and a statistical procedure for determining whether the data indicate the presence of a leak. When a leak is found by either method, the HON requires that the owner or operator identify and fix the source of the leak within 45 days after detection, unless conditions for delay of repair are met. Most of the MACT rules for other chemical manufacturing source categories issued after the HON incorporate by reference the HON's cooling tower system requirements.

Although the HON applies only to major sources, there are no technical reasons why the procedures could not be applied at area sources as well. Therefore, we evaluated the costs of applying the surrogate and direct monitoring options to both subcategories of cooling towers at chemical manufacturing area sources. For cooling towers in the subcategory with cooling water flow rates equal to or greater than 8,000 gal/min, we estimated the average cost of the surrogate monitoring option to be about \$1,600/yr per facility, and the cost-effectiveness is estimated at \$1,100/ton of HAP removed. For cooling towers in the subcategory with cooling water flow rates less than 8,000 gal/min, the cost-effectiveness is estimated at \$13,000/ton of HAP removed.

Based on the information regarding available monitoring methods and estimated costs, we are proposing that GACT be different for the two subcategories. Costs to implement monitoring consistent with HON requirements was determined to be unreasonable for the subcategory of cooling towers with cooling water flow rates less than 8,000 gal/min. Therefore, we are proposing that GACT for this subcategory is management practices as described above for small cooling tower systems. For cooling towers systems in the subcategory with cooling water flow rates equal to or greater than 8,000 gal/min, we estimated that the cost of quarterly surrogate monitoring is reasonable, and therefore we are proposing surrogate monitoring as GACT. We request comment on this decision and rationale for alternative approaches. We are also interested in emission and cost data for cooling towers that are implementing the monitoring requirements in the HON or

other rules at either area sources or major sources.

5. GACT for Equipment Leaks

We concluded that most chemical manufacturing area sources conduct periodic sensory-based inspections to identify and repair leaks as part of routine or preventive maintenance programs. Based on permits and other available information, we determined that some facilities have obtained synthetic minor status for HAP and may be implementing leak detection and repair programs based on instrument monitoring consistent with NESHAP for major sources (e.g., equipment leak standards in 40 CFR part 63, subparts H, U, GGG, JJJ, MMM, and FFFF).

The prevalence of sensory-based inspection programs makes them a viable potential option for GACT. If, as believed, a large percentage of facilities are already being inspected for equipment leaks, the costs associated with this option would be small. The costs are estimated to be about \$1,100/yr/facility for a sensory-based quarterly inspection and repair program.

We also considered a more stringent option that would achieve reductions comparable to the leak detection and repair program in 40 CFR part 63, subpart FFFF. Requirements include periodic instrument-based monitoring of pumps, valves, and in some cases, connectors, to detect leaks of organic compounds above specified concentrations. Monitoring frequencies vary depending on the type of equipment and the percentage of equipment found to be leaking, but the requirements are similar in each rule. These rules also require the use of certain equipment or management practices for other types of equipment. We estimated that annual costs for model facilities range from about \$36,000/yr to \$72,000/yr. In addition, we anticipate that most of the processes at area sources are batch processes. In the analysis for the MON, we determined the cost-effectiveness of the MACT floor for batch processes (i.e., an LDAR program only slightly different than the final standard) at about \$11,000/ton of HAP removed. Given that area sources likely have fewer components and lower emissions than major source, we expect the cost-effectiveness to implement an LDAR program like that in the MON would be higher than \$11,000/yr. This cost is unreasonable. Therefore, we are proposing that GACT for equipment leaks at all chemical manufacturing area sources is a program to conduct quarterly sensory-based inspections for leaks and repair equipment found to be

leaking. As explained above, while the cost-effectiveness cannot be determined, the actual cost is reasonable.

6. GACT for Transfer Operations

Management practices to minimize emissions from transfer operations are commonly implemented. These procedures include minimizing spills, cleaning up spills promptly, covering open containers when not in use, and minimizing discharges to open waste collection systems. We estimate the average costs to implement these management practices at \$620/yr per facility.

In background documentation for the HON, we noted that as of 1991 approximately 97 percent of the SOCM facilities have, in addition to implementing the management practices set forth above, already converted vehicles and, where necessary, loading racks for submerged fill or bottom loading. Thus, submerged loading is another available management practice for transfer operations. Assuming the 1991 findings are still valid for area sources, we estimate that three area sources would need to install equipment to comply with a standard that requires submerged loading, and we estimate the costs to be less than \$2,000/yr per facility.

We also considered vapor balancing as GACT. Several MACT rules allow vapor balancing as an alternative to demonstrating compliance with a percent reduction emissions limit. As part of the GACT analysis we evaluated the costs for facilities to implement vapor balancing. If all facilities could implement vapor balancing, we estimated the costs to be approximately \$12,000/yr per facility, and the estimated cost-effectiveness to be approximately \$130,000/ton of HAP removed. However, vapor balancing uses process equipment and may not be feasible for all affected facilities. To achieve a comparable level of emissions control, these facilities would have to route displaced vapors from the tank trucks and railcars to an air pollution control device. If a new control device must be installed, the costs may be considerably greater than for vapor balancing. As a result, the cost-effectiveness of a control option based on vapor balancing or equivalent control is likely to be greater than \$130,000/ton of HAP removed.

Because the cost of vapor balancing was determined to be unreasonable, we are proposing that GACT for transfer operations at all chemical manufacturing area sources consists of management practices to minimize

evaporation losses and the use of submerged loading.

7. GACT for Wastewater Systems

Chemical manufacturing facilities typically discharge wastewater to some form of water treatment because treatment is needed to meet applicable effluent limitations. Biological treatment, either onsite or offsite, is the most common form of treatment. Other types of treatment include steam stripping and treatment onsite or offsite as a hazardous waste. All of the MACT standards for the different chemical manufacturing source categories require treatment of wastewater streams that meet certain flow and HAP concentration levels. These standards require either the use of a treatment unit that meets specified design criteria or that achieves specified destruction efficiencies for the HAP in the wastewater. They also typically require the use of covers and other techniques to suppress emissions from the wastewater conveyance system and treatment units. Some of the MACT standards also prohibit the discharge of multi-phase wastewater streams to wastewater treatment systems. Decanters and other equipment that separate organic materials and water mixtures into separate streams are widely available and used to meet this requirement. Although information about the number of area sources implementing controls like those required in the MACT standards is not available, the technology used to meet these standards is as applicable at an area source as at a major source.

Based on the information regarding available controls, we developed three options for evaluation as GACT for the two subcategories of wastewater streams: (1) Discharge the wastewater stream to a treatment process, (2) use gravity separation techniques to separate organic and water layers (and then discharge only the water phase to wastewater treatment), and (3) treat the wastewater stream using controls that meet MACT requirements (specifically the HON requirements). As part of the analysis, we evaluated the costs of each option. Because facilities typically implement some form of treatment for all wastewater streams (i.e., both subcategories), we assumed that area sources would incur no additional costs to meet Option 1.

Costs for Option 2 consist of the cost for a decanter and the cost to dispose of the organic layer as a hazardous waste. We estimated that 20 area sources have wastewater streams in the subcategory of streams with PSHAP concentrations equal to or greater than 10,000 ppmw

and are not currently implementing separation techniques as specified in Option 2. We estimated the average cost-effectiveness for these area sources to implement Option 2 at \$1,600/ton of HAP removed. This approach may overstate the costs if the recovered organic material can be reused in the process or as fuel. Option 2 is not applicable for the subcategory of streams with PSHAP concentrations below 10,000 ppmw; gravity separation techniques would have no effect on streams in this subcategory because they are already a single phase.

Costs for Option 3 were estimated assuming an owner or operator would either treat the wastewater onsite using steam stripping or collect the wastewater for treatment offsite as a hazardous waste, whichever is least costly. The average cost-effectiveness for the estimated 20 facilities with wastewater streams in the subcategory of streams with PSHAP concentrations equal to or greater than 10,000 ppmw is \$16,000/ton of HAP removed. We estimated that at least 24 area sources are in the subcategory with PSHAP concentrations less than 10,000 ppmw. The estimated average cost-effectiveness for these area sources to meet Option 3 is \$110,000/ton of HAP removed.

Based on the information regarding available controls and estimated costs, we are proposing that GACT be different for the two subcategories. All three control options are technically feasible at area sources; therefore, we selected GACT based on the most effective method or combination of methods that has acceptable costs. For both subcategories, we are proposing that GACT consists of some form of treatment (e.g., whatever is needed to meet effluent limitations) because this control is typically already being implemented by area sources and therefore the costs are reasonable. For the subcategory of wastewater streams with PSHAP concentrations equal to or greater than 10,000 ppmw, we are proposing that GACT also consists of the use of gravity separation techniques to separate the wastewater into organic and water layers before the water layer is discharged to treatment because the cost of this control technique is reasonable. We are proposing that controls needed to meet more stringent emission limits like those required by the HON do not represent GACT for either subcategory because the costs are unreasonable.

C. How did we select compliance requirements?

For new and existing sources, we are proposing to apply the testing;

monitoring; operation and maintenance; and notification, reporting, and recordkeeping requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) to ensure compliance with this proposed rule. We are proposing management practices for all emission sources except wastewater and emission limits for all emission sources except equipment leaks and transfer operations. We propose that the requirements in the General Provisions and the additional requirements discussed below are sufficient to ensure compliance with the proposed emissions limits and management practices.

Initial compliance certification followed by quarterly inspections is required for all management practices proposed in this notice. We have determined that monitoring in the form of recordkeeping is sufficient to ensure compliance with the requirements of the proposed rule. Records of inspections that document the date of each inspection, the results of each inspection, and the actions taken as a result of findings during the inspections are required. These compliance requirements are similar the equipment leak inspection requirements in 40 CFR part 63, subparts R and HHHHH and are sufficient to verify that the inspections have been conducted at the required frequency and that the leaking equipment has been identified and promptly repaired.

For cooling towers and transfer operations the management practices have additional requirements. The management practices for cooling tower systems requires the owner or operator to develop an inspection plan describing corrective actions to be taken if the presence of a leak is indicated. The management practices for transfer operation require submerged loading.

The proposed compliance requirements associated with the emission limits in the proposed rule are addressed below. We have reviewed the testing, monitoring, recordkeeping and reporting requirements for batch process vents and continuous process vents in subparts SS and FFFF of 40 CFR this part 63. We believe that these requirements are sufficient to ensure compliance with the proposed emissions limits for continuous and batch process vents for the nine area source categories at issue in this proposed rule. We have, therefore, incorporated the subpart SS and subpart FFFF testing, monitoring, recordkeeping, and reporting requirements into this rule for those continuous and batch process vent

subcategories that are subject to emission reduction limits.

We have reviewed the testing, monitoring, recordkeeping and reporting requirements for metal process vents in subpart NNNNNN of part 63 (standards for chromium compound manufacturing). We are proposing to require the testing and reporting requirements for chromium compound manufacturing in 40 CFR part 63, subpart NNNNNN for the subcategory of area sources (both new and existing) that emit more than 100 lb/yr of metal HAP. We are also proposing to require the monitoring requirements in subpart NNNNNN for new area sources that emit more than 100 lb/yr of metal HAP. For existing sources, however, we have determined that monitoring of control device parameters is needed to demonstrate compliance with the 95 percent reduction emission limit. Therefore, we are proposing that each existing source develop a site-specific monitoring plan to identify the operating parameters that will be monitored and the operating limit for each parameter. We are also proposing that existing sources keep records of the collected monitoring data.

We have reviewed the inspection, monitoring, recordkeeping, and reporting requirements in the NSPS for volatile organic liquid storage tanks (40 CFR part 60, subpart Kb), and we believe that these requirements are sufficient to assure compliance with the emission standards proposed in this rule for large storage tanks (i.e., the subcategory of storage tanks that exceed the capacity and MTVP thresholds in 40 CFR part 60, subpart Kb). Therefore, we are proposing to incorporate the inspection, monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart Kb into this rule to apply to the large storage tank subcategory.

We have reviewed the testing, monitoring, recordkeeping, and reporting requirements for cooling towers in 40 CFR part 63, subpart F. We have determined that these requirements are sufficient to assure compliance with the proposed surrogate monitoring standards for the cooling tower emission sources in this rule. Therefore, we are incorporating by reference the testing, monitoring, recordkeeping, and reporting requirements of subpart F and applying those requirements to the subcategory of area sources that are subject to the surrogate monitoring standards for cooling towers in this proposed rule.

Each owner or operator would be required to keep records identifying all wastewater streams with total partially

soluble HAP concentrations greater than 10,000 ppmw and the disposition of all organic phases generated in decanters or other separation equipment. We have determined that these requirements are sufficient to assure compliance with the proposed standards for wastewater.

D. Why did we decide to exempt these area source categories from title V permitting requirements?

We are proposing exemption from title V permitting requirements for affected sources in the Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production, and Synthetic Rubber Manufacturing area source categories for the reasons described below.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 ("Exemption Rule").

The four factors that EPA identified in the Exemption Rule for determining whether title V is "unnecessarily burdensome" on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement

programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source categories would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As explained below, we propose that title V permitting is unreasonably burdensome for the area source categories at issue in this proposed rule. We have also determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the exemption from title V requirements for sources in the categories affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the area source categories. The proposed rule requires implementation of certain management practices, which are practices that are currently used at most facilities, for most subcategories and add on controls and other requirements, in addition to management practices for other subcategories of sources. The proposed rule requires direct monitoring of emissions or control device parameters, both continuous and periodic, recordkeeping that also may serve as monitoring, and deviation and other

semi-annual reporting to assure compliance with these requirements.

The monitoring component of the first factor favors title V exemption. For the management practices, this proposed standard provides monitoring in the form of recordkeeping that would assure compliance with the requirements of the proposed rule. Monitoring by means other than recordkeeping for the management practices is not practical or appropriate. Records are required to ensure that the management practices are followed. The proposed rule requires the owner or operator to record the date and results of inspections, as well as any actions taken in response to findings of the inspections. The records are required to be maintained as checklists, logbooks and/or inspection forms. The rule also requires emission limit requirements for some subcategories. Monitoring of control device or recovery device operating parameters using CPMS or periodic monitoring is required to assure compliance with these emission limits.

As part of the first factor, in addition to monitoring, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6.

For any chemical manufacturing area source, this proposed NESHAP requires an Initial Notification and a Notification of Compliance Status. This proposed rule also requires facilities to certify compliance with the emission limits and management practices. In addition, facilities must maintain records showing compliance with the required emission limits, management practices and deviation requirements. The information required in the deviation reports is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). In addition to documenting all deviations, sources are required to include in the semi-annual report any delay in repair of any leak or any process change that required a performance test or recalculation of emissions.

We acknowledge that title V might impose additional compliance requirements on these categories, but we have determined that the monitoring, recordkeeping and reporting requirements of the proposed NESHAP are sufficient to assure compliance with the provisions of the NESHAP, and title

V would not significantly improve those compliance requirements.

For the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the categories and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was \$38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. EPA does not have specific estimates for the burdens and costs of permitting these types of chemical manufacturing area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on any facility subject to title V. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities affected by this proposal, we found that many of the facilities that would be affected by this proposed rule are small entities. These small sources lack the technical resources that would be needed to comply with permitting

requirements and the financial resources that would be needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in these categories. Furthermore, given the number of sources in the categories, it would likely be difficult for them to obtain sufficient assistance from the permitting authority. Thus, we conclude that factor two supports title V exemption for these categories.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the costs of compliance with title V would impose a significant burden on many of the approximately 450 facilities affected by the proposed rule. We also concluded in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the proposed NESHAP assure compliance with the emission standards imposed in the NESHAP. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for these area source categories.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide States the opportunity to take delegation of area source NESHAP, and we believe that States delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program).

We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113

and 114. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with these proposed standards without relying on title V permitting.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed standards without relying on title V permitting.

Balancing the four factors for these area source categories strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on these area source categories. We further maintain that the economic and non-economic costs of compliance with title V would impose a significant burden on the sources. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is “unnecessarily burdensome” for these area source categories.

In addition to evaluating whether compliance with title V requirements is “unnecessarily burdensome”, EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting these area source categories from title V requirements would adversely affect public health, welfare, or the environment. Exemption of these area source categories from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new

substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt these area source categories from title V permitting requirements.

V. Impacts of the Proposed Standards

A. What are the air impacts?

We estimate that the proposed standard will reduce organic HAP emissions by 211 tpy and metal HAP emissions by 44 tpy from the baseline level, for an overall HAP emission reduction of 255 tpy from the baseline. Table 3 of this preamble summarizes the estimated HAP reductions under the proposed standards for each type of emission point.

TABLE 3—ESTIMATED NATIONWIDE HAP EMISSION REDUCTIONS

Emission point	HAP emission reduction (tpy)	Urban HAP emission reduction (tpy)
Batch process vents	45	14
Continuous process vents	30	9
Metal HAP process vents (100 lb/yr)*	44	41
Storage tanks	5	5
Cooling tower systems	78	24
Transfer operations	1	0.2
Wastewater systems	51	16

TABLE 3—ESTIMATED NATIONWIDE HAP EMISSION REDUCTIONS—Continued

Emission point	HAP emission reduction (tpy)	Urban HAP emission reduction (tpy)
Total	255	110

*With a metal HAP subcategory of 400 lb/yr, the emission reductions would be 41 tons per year HAP and 37 tons per year urban HAP.

B. What are the cost impacts?

The total capital cost of the proposed standard is estimated at \$2.9 million. The total annualized cost of the proposed standards, including the annualized cost of capital equipment, is estimated at \$3.9 million/yr. For the co-proposed threshold of 400 lb/yr the total capital cost is estimated at \$2.3 million and the total annualized cost is estimated at \$2.6 million/yr. Additional information on our impact estimates on the sources is available in the docket. (See Docket Number EPA-HQ-OAR-2008-0334.)

C. What are the economic impacts?

The proposed standard is estimated to impact a total of 450 existing area source facilities and 27 new sources in the next 3 years. Few of these facilities are small entities. Our analyses indicate that the proposed rule will not impose a significant adverse impact on any facilities, large or small. The average cost for each chemical manufacturing industry is projected to be less than 0.07 percent of average sales. In addition, the average costs in each industry are projected to be less than 0.2 percent of average sales for the smallest facilities within each industry (i.e., facilities with 50 to 99 employees).

D. What are the non-air health, environmental, and energy impacts?

The secondary impacts would include energy impacts associated with direct operation of combustion control devices, energy impacts associated with the generation of electricity to operate control devices, and solid waste generated as a result of the metal HAP emissions collected. Organic materials that are recovered from wastewater using gravity separation techniques would also be a solid waste if the material could not be reused in a process or as fuel.

We estimate that an additional 220 megawatt-hour/yr of electricity and 260,000 standard cubic feet per year (scf/yr) of natural gas would be needed to operate control devices. We estimate that an additional 2.1 tpy of criteria

pollutants would be generated from the combustion of natural gas in combustion control devices and from the combustion of coal to generate electricity. We estimate that controlling metal HAP emissions would generate an additional 620 tpy of solid waste, including about 44 tpy of HAP metals. An estimated 8 tpy of organic material would be recovered from wastewater using gravity separation techniques.

The electricity, criteria pollutant, and solid waste impacts from controlling HAP metals would be lower under the co-proposed alternative that sets a higher size threshold between subcategories of metal HAP process vents. Overall, if the proposed rule includes this co-proposed alternative, we estimate that an additional 150 megawatt-hours of electricity would be needed, an additional 1.4 tpy of criteria pollutants would be generated, and an additional 580 tpy of solid waste would be generated (including 41 tpy of HAP metal and 8 tpy of organic material from wastewater controls).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2323.01.

The recordkeeping and reporting requirements in the proposed rule are based on the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency’s implementing regulations at 40 CFR part 2, subpart B.

The proposed information collection requirements consist of an initial notification of applicability, notification for use of previous test data, notification

of performance test, notification of compliance status report, performance tests, recordkeeping, and semiannual compliance reports.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 11,488 labor hours per year at a cost of \$0.87 million for the 450 existing area sources and 27 estimated new sources. Capital/startup costs for performance tests and monitoring equipment are estimated at \$102,800, and operation and maintenance costs for the monitoring equipment are estimated at \$11,900/yr. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2008-0334. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 6, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed area source NESHAP on small entities, small entity is defined as: (1) A small business that

meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500, 750, or 1,000 employees depending on the category); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. An economic impacts analysis was performed to compare the control costs associated with producing a product at facilities in the various chemical manufacturing industries to the average value of shipments from such facilities. In all industries, the average costs are projected to be less than 0.07 percent of average sales. For the smallest facilities in each industry (those with 50 to 99 employees), the average costs are all projected to be less than 0.2 percent of average sales. Thus, any price increases or loss of profit would be quite small.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to minimize the impact of this rule on all facilities, including small entities. Most facilities are in subcategories for which the proposed standards represent practices and controls that are common in the industry. The standards also include only the minimal amount of recordkeeping and reporting needed to demonstrate and verify compliance. For example, compliance reports are required only for semiannual reporting periods in which a deviation occurred, the owner or operator invoked delay of repair provisions for a cooling tower system, or a process change was made that potentially changed the conditions on which a subcategory determination was made.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on

any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are 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.”

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action imposes requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local government, EPA specifically solicits comments on the proposed rule from State and local officials.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would 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. The action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. The rulemaking involves technical standards. Therefore, EPA conducted a search to identify potentially applicable VCS. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use Methods 5, 5D, and 29.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

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.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The proposed rule establishes national standards for each area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 19, 2008.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart VVVVVV to read as follows:

Subpart VVVVVV—National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Source Categories

Applicability and Compliance Dates

Sec.

63.11494 What are the applicability requirements and compliance dates?

Standards and Compliance Requirements

63.11495 What are the management practices and other requirements?

63.11496 What are the standards and compliance requirements for process vents?

63.11497 What are the standards and compliance requirements for storage tanks?

63.11498 What are the standards and compliance requirements for equipment leaks?

63.11499 What are the standards and compliance requirements for transfer operations?

63.11500 What are the standards and compliance requirements for wastewater systems and cooling tower systems?

63.11501 What are the notification, recordkeeping, and reporting requirements?

Other Requirements and Information

63.11502 What definitions apply to this subpart?

63.11503 Who implements and enforces this subpart?

Tables to Subpart VVVVVV of Part 63

Table 1 to Subpart VVVVVV of Part 63—Hazardous Air Pollutants Used to Determine Applicability of Chemical Manufacturing Operations

Table 2 to Subpart VVVVVV of Part 63—Emission Limits, Management Practices, and Compliance Requirements

Table 3 to subpart VVVVVV of Part 63—Partially Soluble HAP

Table 4 to Subpart VVVVVV of Part 63—Applicability of General Provisions to Subpart VVVVVV

Applicability and Compliance Dates

§ 63.11494 What are the applicability requirements and compliance dates?

(a) Except as specified in paragraph (c) of this section, you are subject to this subpart if you own or operate chemical manufacturing operations that process, use, produce, or generate any of the HAP listed in Table 1 to this subpart (Table 1 HAP) and are located at an area source of HAP emissions. Feedstocks and products that contain Table 1 HAP are defined to be materials that contain greater than 0.1 percent for carcinogens, as defined by OSHA at 29 CFR 1910.1200(d)(4), and greater than 1.0 percent for noncarcinogens. To determine the Table 1 HAP content of feedstocks you may rely on formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

(b) Chemical manufacturing operations include all process equipment and activities involved in the production of materials described by NAICS code 325. Chemical manufacturing operations also include each storage tank, transfer rack, cooling tower system, wastewater system, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve,

connector, and instrumentation system associated with the production of such materials.

(c) This subpart does not apply to the operations specified in paragraphs (c)(1) through (5) of this section.

(1) The following chemical manufacturing area source categories listed pursuant to CAA section 112(c)(3) or 112(k)(3)(B)(ii) that are subject to or will be subject to area source standards under this part:

(i) Manufacture of Paint and Allied Products

(ii) Manufacture of Chemical Preparations

(iii) Mercury Cell Chlor-Alkali Plants subject to subpart IIIII of this part.

(iv) Manufacture of polyvinyl chloride resins subject to subpart DDDDDD of this part.

(v) Manufacture of acrylic and modacrylic fibers and filaments subject to subpart LLLLLL of this part.

(vi) Manufacture of carbon black subject to subpart MMMMMM of this part.

(vii) Manufacture of chromium compounds subject to subpart NNNNNN of this part.

(2) The following chemical manufacturing processes or chemical products described in NAICS code 325:

(i) Manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium, uranium.

(ii) Manufacture of photographic film, paper, and plate where the material is coated with or contains chemicals. This subpart does apply to the manufacture of photographic chemicals.

(iii) Fabricating operations (such as spinning or compressing a solid polymer into its end use); compounding operations (in which blending, melting, and resolidification of a solid polymer product occur for the purpose of incorporating additives, colorants, or stabilizers); and extrusion and drawing operations (converting an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product). An operation is subject if it involves processing with HAP solvent or if an intended purpose of the operation is to remove residual HAP monomer.

(iv) Manufacture of chemicals classified in NAICS code 325222, 325314, or 325413.

(3) Research and development facilities, as defined in CAA section 112(c)(7).

(4) Quality assurance/quality control laboratories.

(5) Boilers and incinerators not used to comply with the emission standards

in §§ 63.11495 through 63.11500, chillers and other refrigeration systems, and other equipment and activities that are not directly involved (i.e., they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a product or intermediates used in the production of the product.

(d) This subpart applies to each new or existing affected source. The affected source is the chemical manufacturing operations located at a facility that meets the criteria specified in paragraphs (a) and (b) of this section.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2008.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2008.

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

(f) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than 3 years after the date of publication of the final rule in the **Federal Register**.

(g) If you startup a new affected source on or before the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart no later than the date of publication of the final rule in the **Federal Register**.

(h) If you startup a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11495 What are the management practices and other requirements?

(a) If you have an affected source with batch process vents, all process equipment in which organic HAP is used to process material must be covered when in use, and closure mechanisms on other openings and access points in process equipment must be in the closed position during operation, except when operator access is necessary. You must conduct

inspections at least quarterly to demonstrate compliance with these requirements and to determine if process equipment is sound and free of leaks. You must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. You must keep records of the dates and results of each inspection and the dates of equipment repairs. You must also comply with § 63.11496(a) and Item 1 in Table 2 to this subpart, as applicable.

(b) If you have an affected source with continuous process vents, all process equipment in which organic HAP is used to process material must be covered when in use, and closure mechanisms on other openings and access points in process equipment must be in the closed position during operation, except when operator access is necessary. You must conduct inspections at least quarterly to demonstrate compliance with these requirements and to determine if process equipment is sound and free of leaks. You must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. You must keep records of the dates and results of each inspection and the dates of equipment repairs. You must also comply with § 63.11496(b) and Item 2 in Table 2 to this subpart, as applicable.

(c) If you have an affected source with metal HAP process vents, all process equipment in which metal HAP is present during the process must be covered when in use, and closure mechanisms on other openings and access points in process equipment must be in the closed position during operation, except when operator access is necessary. You must conduct inspections at least quarterly to determine compliance with these requirements and to determine if the process equipment is sound and free of leaks. You must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. You must keep records of the dates and results of each inspection and the dates of equipment repairs. You must also comply with § 63.11496(f) and Item 3 in Table 2 to this subpart, as applicable.

(d) All openings and access points in storage tanks that are used to store liquid that contains organic HAP at an affected source must be covered, and the covers must be in the closed position, except when operator access is necessary. You must conduct inspections at least quarterly to determine compliance with these requirements and to determine if the

storage tank is sound and free of leaks. You must repair any leak within 15 calendar days after detection of the leak, or document the reason for any delay of repair. You must keep records of the dates and results of each inspection and the date each leaking tank is removed from service or repaired. You must also comply with § 63.11497 and Item 4 in Table 2 to this subpart, as applicable.

(e) For all equipment in organic HAP service, as defined in § 63.11502, you must comply with § 63.11498.

(f) For all transfer operations at an affected source, you must not allow any transferred material that contains organic HAP to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the actions specified in paragraphs (f)(1) through (5) of this section.

(1) Minimize spills of material containing HAP.

(2) Clean up spills of materials containing HAP as expeditiously as practicable.

(3) Cover all open containers of liquid containing HAP when not in use.

(4) Minimize the amount of HAP-containing material sent to wastewater collection systems.

(5) Use a submerged fill pipe that discharges no more than 12 inches from the bottom of the cargo tank.

(g) For each cooling tower system at an affected source, you must comply with paragraph (g)(1) or (2) of this section, as applicable.

(1) For each cooling tower system with a water recirculation rate less than 8,000 gallons per minute (gal/min) that serves heat exchangers with process fluid that contains any HAP listed in Table 4 to 40 CFR part 63, subpart F, you must develop and operate in accordance with a cooling tower system inspection plan. The plan must describe the inspections to be performed that will provide evidence of hydrocarbons in the recirculating water. Among other things, inspections may include checks for visible floating hydrocarbon on the water, hydrocarbon odor, discolored water, and/or chemical addition rates. The plan must also describe corrective actions to be taken in response to inspection results that indicate the presence of a leak. You must repair any leak within 45 calendar days after detection of the leak, or document the reason for any delay of repair. You must conduct inspections at least once per quarter. You must maintain a log or checklist to document the dates and results of inspections and the dates and types of corrective actions taken after detecting leaks.

(2) For each cooling tower with a water recirculation rate greater than or equal to 8,000 gal/min that serves heat exchangers with process fluid that contains any HAP listed in Table 4 to 40 CFR part 63, subpart F, you must comply with the emission standards and other requirements specified in § 63.11500(b) and Item 5 in Table 2 to this subpart.

(h) You must comply with the applicable standards in § 63.11500(a) and Items 7 and 8 in Table 2 to this subpart, as applicable, for all wastewater streams that contain HAP listed in Table 3 to this subpart.

§ 63.11496 What are the standards and compliance requirements for process vents?

(a) *Organic HAP emissions from batch process vents.* You must comply with the requirements in paragraphs (a)(1) through (4) of this section for organic HAP emissions from your batch process vents. If uncontrolled organic HAP emissions from all batch process vents are equal to or greater than 19,000 lb/yr, you must also comply with the emission limits and other requirements in Item 1 in Table 2 to this subpart.

(1) You must determine the sum of organic HAP emissions from all of your batch process vents using test data or the procedures in § 63.1257(d)(2)(i) and (ii) of subpart GGG of this part and § 63.2460(b)(1) through (5) of subpart FFFF of this part. Emissions for a standard batch in a process may be used to represent emissions from each batch in that process. You must maintain records of the calculations. Calculations are not required if you comply with § 63.2460(b)(5) of subpart FFFF of this part. References in § 63.2460(b) of subpart FFFF to Group 1 batch process vents within a process means vents that must meet the emission standards for batch process vents in Table 2 to this subpart.

(2) As an alternative to calculating actual emissions for each process, you may elect to estimate emissions for each process based on the emissions for the worst-case process. The worst-case process means the process at the affected source with the highest organic HAP emissions per batch. Process knowledge, engineering assessment, or test data may be used to identify the worst-case process. You must keep records of the information and procedures used to identify the worst-case process.

(3) If your current estimate is that emissions from batch process vents are less than 19,000 lb/yr, then you must keep a record of the number of batches of each process operated per month.

Also, you must reevaluate your total emissions from batch process vents prior to making any process changes that affect emissions. If projected emissions increase to 19,000 lb/yr or more, you must comply with one of the compliance options for batch process vents in Item 1 in Table 2 to this subpart before operating under the new operating conditions. You must maintain records documenting the results of all updated emissions calculations.

(4) As an alternative to determining the HAP emissions, you may elect to demonstrate that the amount of organic HAP used in chemical manufacturing operations is less than 19,000 lb/yr. You must provide data and rationale in your notification of compliance status report explaining why the organic HAP usage will be less than 19,000 lb/yr. You must keep monthly records of the organic HAP usage.

(b) *Organic HAP emissions from continuous process vents.* You must comply with the requirements in paragraphs (b)(1) through (3) of this section for organic HAP emissions from your continuous process vents. If the TRE index value for a continuous process vent is less than or equal to 1.0, you must also comply with the emission limits and other requirements in Item 2 in Table 2 to this subpart.

(1) You must determine the TRE index value according to the procedures in § 63.115(d) of subpart G of this part, except as specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) You are not required to calculate the TRE index value if you control emissions in accordance with Item 2 in Table 2 to this subpart.

(ii) The reference to § 63.113(a) in § 63.115(d) of subpart G of this part is not applicable for the purposes of this paragraph.

(iii) The term "Group 1" vent in § 63.115(d) of subpart G of this part means a continuous process vent with a TRE index value less than 1.0.

(2) If the current TRE index value is greater than 1, you must recalculate the TRE index value before you make any process or operational change that affects parameters in the calculation. If the recalculated TRE is less than or equal to 1.0, then you must comply with one of the compliance options for continuous process vents in Item 2 to Table 2 to this subpart before operating under the new operating conditions. You must maintain records of all TRE calculations.

(3) If a recovery device is used to maintain the TRE index value at a level greater than 1.0 and less than or equal to 4.0, you must comply with with

§ 63.982(e) and the requirements specified therein.

(c) *Combined streams.* If you combine organic HAP emissions from batch process vents and continuous process vents, you must comply with the most stringent standard in Table 2 of this subpart that applies to any portion of the combined stream. The TRE index value for continuous process vents and the annual emissions from batch process vents shall be determined for the individual streams before they are combined in order to determine the most stringent applicable requirements.

(d) *Combustion of halogenated streams.* If you use a combustion device to comply with the emission limits for organic HAP from batch process vents or continuous process vents, you must use a halogen reduction device to meet the emission limit in either paragraph (d)(1) or (2) of this section in accordance with § 63.994 of subpart SS of this part and the requirements referenced therein.

(1) Reduce overall emissions of hydrogen halide and halogen HAP after the combustion device by greater than or equal to 95 percent, to less than or equal to 0.45 kilograms per hour (kg/hr), or to a concentration less than or equal to 20 parts per million by volume (ppmv).

(2) Reduce the halogen atom mass emission rate before the combustion device to less than or equal to 0.45 kg/hr or to a concentration less than or equal to 20 ppmv.

(e) *Alternative standard for organic HAP.* Exceptions to the requirements for the alternative standard requirements specified in Table 2 to this subpart and § 63.2505 of subpart FFFF of this part are specified in paragraphs (e)(1) through (4) of this section.

(1) When § 63.2505 of subpart FFFF refers to Tables 1 and 2 to subpart FFFF and §§ 63.2455 and 63.2460, it means Table 2 to this subpart and § 63.11496(a) and (b).

(2) Section 63.2505(a)(2) of subpart FFFF does not apply.

(3) When § 63.2505(b) of subpart FFFF references § 63.2445 it means § 63.11494.

(4) The requirements for hydrogen halide and halogen HAP apply only to hydrogen halide and halogen HAP generated in a combustion device that is used to comply with the alternative standard.

(f) *Emissions from metal HAP process vents.* You must comply with the requirements in paragraphs (f)(1) through (3) of this section for metal HAP emissions from your metal HAP process vents. If the uncontrolled metal HAP emissions from your metal HAP process

vents is equal to or greater than [100 lb/yr or 400 lb/yr], then you must also comply with the emission limits and other requirements in Item 3 in Table 2 to this subpart.

(1) You must determine and sum the emissions from all of the metal HAP process vents, except you are not required to determine the emissions if you control metal HAP process vents in accordance with Item 3 in Table 2 to this subpart. To determine the mass emission rate you may use process knowledge, engineering assessment, or test data. You must keep records of the emissions calculations.

(2) If your current estimate is that metal HAP emissions are less than [100 lb/yr or 400 lb/yr], then you must keep records of either the number of batches operated per month or the process operating hours, whichever is consistent with the basis used in the initial estimate of emissions per year. Also, you must reevaluate your total emissions before you make any process or operational change that affects emissions of metal HAP. If emissions will increase to [100 lb/yr or 400 lb/yr] or more, then you must comply with one of the compliance options for metal HAP process vents in Item 3 in Table 2 to this subpart before operating under the new operating conditions. You must keep records of all recalculated emissions determinations.

(3) If you have an existing source, you must comply with the performance testing and monitoring requirements in § 63.11410(h) through (j)(1) of subpart NNNNNN of this part, except as specified in paragraphs (f)(3)(i) through (v) of this section. If you have a new source, you must comply with the performance testing, monitoring, and recordkeeping requirements in § 63.11410(f) through (j)(1) of subpart NNNNNN of this part, except as specified in paragraphs (f)(3)(i) through (v) of this section.

(i) When § 63.11410(i) of subpart NNNNNN references an emissions limit in § 63.11409(b), it means Table 2 to this subpart.

(ii) For each performance test, sampling must be conducted at both the inlet and outlet of the control device, and the test must be conducted under representative process operating conditions.

(iii) As an alternative to conducting a performance test using Method 5 or 5D to determine the concentration of particulate matter, you may use Method 29 in 40 CFR part 60, Appendix A-8 to determine the concentration of HAP metals. You have demonstrated initial compliance if the overall reduction of

either HAP metals or total PM is equal to or greater than 95 percent.

(iv) If you comply with the monitoring requirements in § 63.11410(h) of subpart NNNNNN of this part, then you must keep records of operating parameters that you monitor to demonstrate continuous compliance.

(v) The requirement in § 63.11410(h) of subpart NNNNNN of this part to submit the monitoring plan to EPA or the delegated authority for approval does not apply. For an existing source, the requirement to prepare a monitoring plan applies to fabric filter controls as well as other types of controls. You must maintain the plan onsite and make it available on request.

§ 63.11497 What are requirements for storage tanks?

You must comply with the emission limits and other requirements in Item 4 in Table 2 to this subpart for organic HAP emissions from your storage tanks.

§ 63.11498 What are the requirements for equipment leaks?

(a) You must perform quarterly leak inspections of all equipment in organic HAP service. For these inspections, detection methods incorporating sight, sound, and smell are acceptable.

(b) You must repair or replace leaking equipment within 15 calendar days after detection of the leak, or document the reason for any delay of repair.

(c) You must record the following information in a log book:

(1) The date and results of each inspection, including the number and location of any liquid or vapor leak.

(2) The date of repair and the reason for any delay of repair beyond 15 calendar days.

§ 63.11499 What are the requirements for transfer operations?

You may comply with the emission standards in Item 6 in Table 2 to this subpart for organic HAP emissions from your transfer operations in lieu of submerged loading requirement in § 63.11495(f)(5).

§ 63.11500 What are the requirements for wastewater systems and cooling tower systems?

(a) You must comply with the requirements in paragraph (a)(1) of this section and in Item 7 in Table 2 to this subpart for all wastewater streams. If the partially soluble HAP concentration in a wastewater stream is equal to or greater than 10,000 parts per million by weight (ppmw), then you must also comply with the emission standards in Item 8 in Table 2 to this subpart for that wastewater stream. Partially soluble

HAP are listed in Table 3 to this subpart.

(1) *Determine concentrations.* You must determine the total concentration of partially soluble HAP in each wastewater stream using the procedures in § 63.144(b) of subpart G of this part, except as specified in paragraphs (a)(1)(i) through (v) of this section. Also, you must reevaluate the concentration of partially soluble HAP if you make any process or operational change that affects the concentration of partially soluble HAP in a wastewater stream.

(i) References in § 63.144(b) of subpart G to Table 9 compounds mean the compounds listed in Table 3 to this subpart.

(ii) References in § 63.144(b) of subpart G to Table 8 compounds do not apply.

(iii) References in § 63.144(b) of subpart G to Group 2 wastewater streams mean streams determined to have total partially soluble HAP concentrations below 10,000 ppmw.

(iv) References in § 63.144(b) of subpart G to flow weighted total annual average concentration mean flow weighted average concentration per chemical manufacturing process (i.e., each process in a flexible operation unit is evaluated separately). If the concentrations in a specific stream vary over the period of discharge but are always less than 10,000 ppmw, then you may elect to determine the maximum concentration only and maintain records containing sufficient information to document why the determined concentration is the maximum for that wastewater stream.

(v) Section 63.144(b)(2) of subpart G does not apply.

(2) [Reserved].

(b) If the water recirculation rate in your cooling tower system is equal to or greater than 8,000 gal/min, then you must comply with the requirements specified in Item 5 in Table 2 to this subpart and in paragraphs (b)(1) through (3) of this section for organic HAP emissions from your cooling tower system.

(1) Monitoring shall be no less frequent than quarterly.

(2) The reference in § 63.104(f)(2) of subpart F to “the next semi-annual periodic report required by § 63.152(c)” means the next semi-annual compliance report required by § 63.11501(f).

(3) The reference in § 63.104(f)(1) of subpart F to record retention requirements in § 63.103(c)(1) does not apply. Records must be retained as specified in §§ 63.10(b)(1) and 63.11501(d).

§ 63.11501 What are my notification, recordkeeping, and reporting requirements?

(a) *General Provisions.* You must meet the requirements of the General Provisions in 40 CFR part 63, subpart A, as shown in Table 4 to this subpart.

(b) *Notification of compliance status.* Your notification of compliance status required by § 63.9(h) must include the following additional information as applicable:

(1) This certification of compliance, signed by a responsible official, for the process vent standards in § 63.11495 and § 63.11496:

(i) "This facility complies with the management practices in § 63.11495 for batch process vents" and, if applicable, "This facility complies with the requirements in § 63.11496(a) for organic HAP emissions from batch process vents by routing emissions from a sufficient number of vents through a closed-vent system to any combination of control devices."

(ii) "This facility complies with the management practices in § 63.11495 for continuous process vents" and, if applicable, "This facility complies with the requirements in § 63.11496(b) for organic HAP emissions from continuous process vents by venting emissions through a closed vent system to any combination of control devices."

(iii) "This facility complies with the management practices in § 63.11495 for metal HAP process vents" and, if applicable, "This facility complies with the requirements in § 63.11496(f) for metal HAP process vents by venting metal HAP emissions through a closed vent system to a control device according to the requirements in § 63.11496(f)."

(2) This certification of compliance, signed by a responsible official, for the storage tank standards in § 63.11495 and § 63.11497: "This facility complies with the management practices in § 63.11495 for storage tanks" and, if applicable, "This facility complies with the requirements in § 63.11497 for storage tanks by operating and maintaining a floating roof or closed vent system and control device in accordance with 40 CFR 60.112b."

(3) This certification of compliance, signed by a responsible official, for the equipment leak standards in § 63.11498: "This facility complies with the requirements for equipment leaks in § 63.11498 for all equipment that contains or contacts organic HAP."

(4) This certification, signed by a responsible official, for the transfer operation standards in § 63.11495 and § 63.11499: "This facility complies with the management practices in § 63.11495

for transfer operations" and, if applicable, "This facility complies with the requirements in § 63.11499 for transfer operations."

(5) This certification of compliance, signed by a responsible official, for the cooling tower standards in § 63.11495 and § 63.11500: "This facility complies with the management practices in § 63.11495 for cooling tower systems" or "This facility complies with the requirements in § 63.11500 for cooling tower systems."

(6) This certification of compliance, signed by a responsible official, for the wastewater standards in § 63.11500: "This facility complies with the requirements in § 63.11500 to treat each wastewater stream" and, if applicable, "This facility complies with the requirements in § 63.11500 for each stream that contains partially soluble HAP at a concentration equal to or greater than 10,000 ppmw."

(7) This certification of compliance, signed by a responsible official, for the requirement to prepare a startup, shutdown, and malfunction plan: "This facility has prepared a startup, shutdown, and malfunction plan in accordance with the requirements of 40 CFR 63.6(e)(3)."

(c) *Recordkeeping.* You must maintain files of all information required by this subpart for at least 5 years following the date of each occurrence according to the requirements in § 63.10(b)(1) of subpart A. If you are subject, you must comply with the recordkeeping requirements of § 63.10(b)(2) of subpart A and the requirements specified for subpart SS (process vents), 40 CFR part 60, subpart Kb (storage tanks), and subpart F (cooling tower systems) as specified in this subpart.

(d) *Semiannual compliance reports.* You must submit a semiannual compliance report as required by § 63.10(e)(3) only for semiannual reporting periods during which a deviation occurred, you invoked the delay of repair provisions for cooling tower systems, you do not repair an equipment leak or a leak in any process vessel or any storage tank within 15 days or any cooling tower with a recirculation rate less than 8000 gal/min within 45 days, or you implemented a process change. Your report must include the information specified in paragraphs (d)(1) through (3) of this section, if applicable.

(1) You must clearly identify any deviation from the requirements of this subpart.

(2) You must include the information specified in § 63.104(f)(2) of subpart F for each delay of repair of each cooling

tower with a recirculation rate greater than or equal to 8,000 gal/min.

(3) You must provide information on the date of the equipment leak or the leak in the process vessel, storage tank, or cooling vessel with a recirculation rate less than 8000 gal./min. was identified, the date the leak was repaired, and the reason for the delay in repair.

(4) You must report each process change that affects a compliance determination and submit a new certification of compliance with the applicable requirements in accordance with the procedures specified in paragraph (b) of this section.

§ 63.11502 What definitions apply to this subpart?

Terms used in this subpart have the meaning given them in the Clean Air Act, § 63.2, subpart SS (§ 63.981), 40 CFR 60.111b, subpart F (§ 63.101), subpart G (§ 63.111), subpart FFFF (§ 63.2550), and in this section as follows:

Batch process vent means the point of discharge from a unit operation in chemical manufacturing operations of a gas stream that contains organic HAP and flows intermittently.

Continuous process vent means the point of discharge from a unit operation in chemical manufacturing operations of a gas stream that originates as a continuous flow from a continuous operation and contains organic HAP.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or management practice;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation systems that contains or contacts organic HAP as defined in section 112 of the CAA.

In organic HAP service means that a piece of equipment either contains or

contacts a fluid (liquid or gas) that contains one or more organic HAP.

Metal HAP means the compounds containing metals listed as HAP in section 112 of the CAA.

Metal HAP process vent means the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any unit operation in chemical manufacturing operations at an affected source.

Organic HAP means any organic HAP listed in section 112 of the CAA. For the purposes of requirements in this subpart VVVVVV, hydrazine is to be considered an organic HAP.

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals from gas streams for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Responsible official means responsible official as defined in 40 CFR 70.2.

Storage tank means a tank or other vessel that is used to store liquids that contain organic HAP that are used in or produced by chemical manufacturing operations. Surge control vessels and bottoms receivers are considered to be storage tanks for the purposes of this

subpart. The following are not considered storage tanks for the purposes of this subpart.

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere; and

(3) Process vessels.

Total organic HAP means all of the organic HAP as defined in section 112 of the CAA.

Transfer operations means all loading into tank trucks and rail cars of liquid containing organic HAP from a transfer rack. A transfer rack is the system used to fill tank trucks and railcars at a single geographic site. Transfer operations do not include the loading to other types of containers such as cans, drums, and totes.

Wastewater means water that is discarded from an affected source and that contains any HAP listed in Table 9 to 40 CFR part 63, subpart G. Wastewater means both process wastewater and maintenance wastewater.

§ 63.11503 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant

to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90.

Tables to Subpart VVVVVV of Part 63

As required in § 63.11494(a), chemical manufacturing operations that process, use, or produce the HAP shown in the following table are subject to subpart VVVVVV.

TABLE 1 TO SUBPART VVVVVV OF PART 63—HAZARDOUS AIR POLLUTANTS USED TO DETERMINE APPLICABILITY OF CHEMICAL MANUFACTURING OPERATIONS

Type of HAP	Chemical name	CAS No.
1. Organic compounds	a. 1,3-butadiene	106990
	b. 1,3-dichloropropene	542756
	c. Acetaldehyde	75070
	d. Chloroform	67663
	e. Ethylene dichloride	107062
	f. Hexachlorobenzene	118741
	g. Methylene chloride	75092
	h. Quinoline	91225
2. Metal compounds	a. Arsenic compounds .....	.....
	b. Cadmium compounds .....	.....
	c. Chromium compounds .....	.....
	d. Lead compounds .....	.....
	e. Manganese compounds .....	.....
	f. Nickel compounds .....	.....
3. Others	a. Hydrazine	302012

As required in §§ 63.11495, 63.11496, 63.11497, 63.11499, and 63.11500, you must comply with the requirements for

process vents, storage tanks, cooling towers, transfer operations, and

wastewater as shown in the following table.

TABLE 2 TO SUBPART VVVVV OF PART 63—EMISSION LIMITS, MANAGEMENT PRACTICES, AND OTHER COMPLIANCE REQUIREMENTS

For . . .	You must . . .	And you must . . .
1. Batch process vents	<p>a. If total organic HAP emissions are equal to or greater than 19,000 lb/yr, reduce collective uncontrolled total organic HAP emissions from the sum of all batch process vents by 90 percent by weight or greater or to <20 ppmv by routing emissions from a sufficient number of the batch process vents through a closed vent system to any combination of control devices (except a flare); or</p> <p>b. Route emissions from batch process vents containing at least 90 percent of the uncontrolled total organic HAP through a closed-vent system to a flare (except that a flare may not be used to control halogenated vent streams), or</p> <p>c. Comply with the alternative standard specified in § 63.2505, except as specified in § 63.11496(e), or</p> <p>d. Comply with combinations of the requirements in items a., b., and c. of this Table for different groups of batch process vents.</p>	<p>i. Comply with the requirements of § 63.982(c) and the requirements referenced therein, and</p> <p>ii. Comply with subpart SS including exceptions and alternatives to requirements in subpart SS as specified in §§ 63.2450(g) through (i), (k), (l), (m)(3), (p), (q), and § 63.2460(c), except that references to emission limits in Table 2 of subpart FFFF mean the emission limits in item 1.a. of this Table, and references to reporting requirements in § 63.2520 mean § 63.11501 of this subpart, and</p> <p>iii. If you combust a halogenated vent stream, comply with the requirements for halogen scrubbers in § 63.11496(d).</p> <p>Comply with the requirements of § 63.982(b) and the requirements referenced therein.</p> <p>Not applicable.</p> <p>Comply with the additional requirements specified above for items a., b., and c., as applicable.</p>
2. Each continuous process vent with a TRE ≤1.0.	<p>a. Reduce emissions of organic HAP by 95 percent by weight or greater by routing emissions through a closed vent system to any combination of control devices (except a flare); or</p> <p>b. Reduce emissions of total organic HAP by routing emissions through a closed-vent system to a flare (except that a flare may not be used to control halogenated vent streams), or</p> <p>c. Comply with the alternative standard specified in § 63.2505, except as specified in § 63.11496(e).</p>	<p>i. Comply with the requirements of § 63.982(c) and the requirements referenced therein, and</p> <p>ii. Comply with exceptions and alternatives to requirements in subpart SS as specified in § 63.2450(g) through (i), (k), (l), (m)(3), (p), and (q), except that references to emission limits in Table 1 of subpart FFFF mean the emission limits in item 2.a. of this Table, and references to reporting requirements in § 63.2520 mean § 63.11501 of this subpart.</p> <p>iii. If you combust a halogenated vent stream, comply with the requirements for halogen scrubbers in § 63.11496(d).</p> <p>Comply with the requirements of § 63.982(b) and the requirements referenced therein.</p> <p>Not applicable.</p>
3. Metal process vents	<p>a. If total metal HAP emissions are equal to or greater than [100 lb/yr or 400 lb/yr], reduce uncontrolled emissions of metal HAP emissions by 95 percent by weight or greater by routing emissions from all metal process vents through a closed-vent system to a control device.</p>	<p>Comply with § 63.11496(f).</p>
4. Each storage tank	<p>a. Operate and maintain a floating roof or closed-vent system and control device in accordance with 40 CFR 60.112b.</p>	<p>i. Comply with the applicable inspection and testing requirements in 40 CFR 60.113b(a), (b), or (c) for the selected control option, and</p> <p>ii. Comply with the applicable recordkeeping and reporting requirements in 40 CFR 60.115b and 40 CFR 60.116b for the selected control option.</p>

TABLE 2 TO SUBPART VVVVV OF PART 63—EMISSION LIMITS, MANAGEMENT PRACTICES, AND OTHER COMPLIANCE REQUIREMENTS—Continued

For . . .	You must . . .	And you must . . .
5. Each cooling tower system with a recirculation rate $\geq 8,000$ gal/min.	a. Comply with the requirements of § 63.104(c), except as specified in § 63.11500(b), or b. Operate in accordance with § 63.104(a)	i. Repair each leak in accordance with § 63.104(d) and (e), and ii. Keep records and submit reports in accordance with § 63.104(f), except as specified in § 63.11500(b). Keep records documenting compliance with the specified operating conditions. Not applicable.
6. Transfer operations	a. Control total organic HAP emissions from all transfer operations using any combination of submerged loading, vapor balancing, and routing displaced vapors through a closed-vent system to a control device.	
7. Wastewater stream	a. Discharge to onsite or offsite treatment	Maintain records identifying each wastewater stream and documenting the type of treatment that it receives.
8. Wastewater stream containing partially soluble HAP at a concentration $\geq 10,000$ ppmw.	a. Use a decanter or other equipment based on the operating principle of gravity separation to separate the water phase from the organic phase(s).	i. For the water phase: comply with the requirements in item 7 of this table, and ii. For the organic phase(s): Recycle to a process, use as fuel, or dispose as hazardous waste, and iii. Keep records of the wastewater streams subject to this requirement and the disposition of the organic phase(s).

TABLE 3 TO SUBPART VVVVV OF PART 63—PARTIALLY SOLUBLE HAP

As required in § 63.11500(a), you must comply with emission limits for wastewater streams that contain the partially soluble HAP listed in the following table.

Partially soluble HAP name	CAS No.
1. 1,1,1-Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2-Tetrachloroethane	79345
3. 1,1,2-Trichloroethane	79005
4. 1,1-Dichloroethylene (vinylidene chloride)	75354
5. 1,2-Dibromoethane	106934
6. 1,2-Dichloroethane (ethylene dichloride)	107062
7. 1,2-Dichloropropane	78875
8. 1,3-Dichloropropene	542756
9. 2,4,5-Trichlorophenol	95954
10. 1,4-Dichlorobenzene	106467
11. 2-Nitropropane	79469
12. 4-Methyl-2-pentanone (MIBK)	108101
13. Acetaldehyde	75070
14. Acrolein	107028
15. Acrylonitrile	107131
16. Allyl chloride	107051
17. Benzene	71432
18. Benzyl chloride	100447
19. Biphenyl	92524
20. Bromoform (tribromomethane)	75252
21. Bromomethane	74839
22. Butadiene	106990
23. Carbon disulfide	75150
24. Chlorobenzene	108907
25. Chloroethane (ethyl chloride)	75003
26. Chloroform	67663
27. Chloromethane	74873
28. Chloroprene	126998
29. Cumene	98828
30. Dichloroethyl ether	111444
31. Dinitrophenol	51285
32. Epichlorohydrin	106898
33. Ethyl acrylate	140885
34. Ethylbenzene	100414
35. Ethylene oxide	75218
36. Ethylidene dichloride	75343
37. Hexachlorobenzene	118741
38. Hexachlorobutadiene	87683
39. Hexachloroethane	67721
40. Methyl methacrylate	80626

TABLE 3 TO SUBPART VVVVV OF PART 63—PARTIALLY SOLUBLE HAP—Continued

As required in § 63.11500(a), you must comply with emission limits for wastewater streams that contain the partially soluble HAP listed in the following table.

Partially soluble HAP name	CAS No.
41. Methyl-t-butyl ether	1634044
42. Methylene chloride	75092
43. N-hexane	110543
44. N,N-dimethylaniline	121697
45. Naphthalene	91203
46. Phosgene	75445
47. Propionaldehyde	123386
48. Propylene oxide	75569
49. Styrene	100425
50. Tetrachloroethylene (perchloroethylene)	127184
51. Tetrachloromethane (carbon tetrachloride)	56235
52. Toluene	108883
53. Trichlorobenzene (1,2,4-)	120821
54. Trichloroethylene	79016
55. Trimethylpentane	540841
56. Vinyl acetate	108054
57. Vinyl chloride	75014
58. Xylene (m)	108383
59. Xylene (o)	95476
60. Xylene (p)	106423

TABLE 4 TO SUBPART VVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVV

As required in § 63.11501(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to Subpart VVVVV?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention ..	Yes.	
63.5	Preconstruction Review and Notification Requirements.	Yes.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f)(g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).	.....	No	Subpart VVVVV does not include opacity or visible emissions standards or require a continuous opacity monitoring system.
63.7	Performance Testing Requirements	Yes.	
63.8(a)(1), (a)(2), (a)(4), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(c)(4) .....	.....	No	Continuous parameter monitoring system (CPMS) requirements in 40 CFR part 63, subparts SS and FFFF are referenced from § 63.11495.
63.8(c)(5) .....	.....	No	Subpart VVVVV does not require continuous opacity monitoring systems (COMS).
63.8(c)(6)–(c)(8), (d), (e), (f)(6) .....	.....	Yes	Requirements apply only if you use a continuous emission monitoring system (CEMS) to demonstrate compliance with the alternative standard in § 63.11495(e).

TABLE 4 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV—
Continued

As required in § 63.11501(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

Citation	Subject	Applies to Subpart VVVVVV?	Explanation
63.8(g)(1)–(g)(4) .....	.....	Yes	Data reduction requirements apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11495(d). COMS requirements do not apply. Requirement in § 63.8(g)(2) does not apply because data reduction for CEMS are specified in 40 CFR part 63, subpart FFFF.
63.8(g)(5) .....	.....	No	Data reduction requirements for CEMS are specified in 40 CFR part 63, subpart FFFF as referenced from § 63.11496. CPMS requirements are specified in 40 CFR part 63, subparts SS and FFFF as referenced from § 63.11496.
63.9(a), (b)(1), (b)(2), (b)(4), (b)(5), (c), (d), (e), (i), (j).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(f) .....	.....	No	Subpart VVVVVV does not contain opacity or VE limits.
63.9(g) .....	.....	Yes	Additional notification requirement applies only if you use CEMS to demonstrate compliance with alternative standard in § 63.11495(d).
63.9(h)(1)–(h)(3), (h)(5)–(h)(6) .....	.....	Yes	Except Subpart VVVVVV does not contain opacity or VE limits.
63.10(a)	Recordkeeping Requirements	Yes.	
63.10(b)(1) .....	.....	Yes.	
63.10(b)(2)(i)–(b)(2)(v) .....	.....	Yes.	
63.10(b)(2)(vi), (x), (xi), (xiii) .....	.....	Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11495(e).
63.10(b)(2)(vii)–(b)(2)(ix), (b)(2)(xii), (b)(2)(xiv).	.....	Yes.	
63.10(b)(3) .....	.....	Yes.	
63.10(c)(1), (c)(5)–(c)(6), (c)(13)–(c)(14) ..	.....	Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(d).
63.10(c)(7)–(c)(8), (c)(10)–(c)(12), (c)(15) .....	.....	Yes.	
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(2), (d)(4), (e)(1), (e)(2), (f) ..	Reporting Requirements	Yes.	
63.10(d)(3) .....	.....	No	Subpart VVVVVV does not include opacity or VE limits.
63.10(d)(5) .....	.....	Yes.	
(e)(1)–(e)(2) .....	.....	Yes	Apply only if you use CEMS to demonstrate compliance with alternative standard in § 63.11496(d).
63.10(e)(3) .....	.....	Yes.	
63.10(e)(4) .....	.....	No	Subpart VVVVVV does not include opacity or VE limits.
63.11	Control Device Requirements	Yes.	
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	



Federal Register

Monday,
October 6, 2008

Part V

Environmental Protection Agency

40 CFR Parts 262, 264, et al.
**Revisions to: The Requirements for
Transboundary Shipments of Wastes
Between OECD Countries, the
Requirements for Export Shipments of
Spent Lead-Acid Batteries, the
Requirements on Submitting Exception
Reports for Export Shipments of
Hazardous Wastes, and the Requirements
for Imports of Hazardous Wastes;
Proposed Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
**40 CFR Parts 262, 264, 265, 266, and
271**
[EPA-HQ-RCRA-2005-0018; FRL-8720-3]
RIN 2050-AE93
**Revisions to: The Requirements for
Transboundary Shipments of Wastes
Between OECD Countries, the
Requirements for Export Shipments of
Spent Lead-Acid Batteries, the
Requirements on Submitting
Exception Reports for Export
Shipments of Hazardous Wastes, and
the Requirements for Imports of
Hazardous Wastes**
AGENCY: Environmental Protection
Agency.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding the export and import of hazardous wastes from and into the United States. Specifically, we are proposing to modify: The requirements to implement the OECD framework concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), including reducing the number of control levels, exempting qualifying shipments sent for laboratory analyses from certain paperwork requirements, requiring recovery facilities to submit a certificate of recovery, adding provisions for the return or re-export of wastes subject to the Amber control procedures, and clarifying certain existing provisions that were identified as potentially ambiguous to the regulated community; the regulations regarding the management of spent lead-acid batteries being reclaimed to require appropriate notice and consent for those batteries intended for reclamation in a foreign country; the exception reporting requirements for hazardous waste exports to specify that all exception reports submitted to EPA be sent to the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator; and the hazardous waste import requirements such that U.S. importers would give the initial transporter a copy of the EPA-provided documentation confirming EPA's consent to the import when they provide the RCRA hazardous waste manifest, and that the documentation

would be submitted by the U.S. receiving facility to EPA along with the RCRA hazardous waste manifest within thirty days of import shipment delivery. Finally, separate from this proposed rule, EPA is publishing in <http://www.epa.gov/epawaste/hazard/international/oecd-slab-rule.htm> a draft guidance document on how U.S. receiving facilities may request EPA to identify them as pre-approved facilities to receive hazardous waste from OECD Member countries.

DATES: Comments must be received on or before December 5, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before November 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2005-0018, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* rcra-docket@epa.gov, Attention Docket No. EPA-HQ-RCRA-2005-0018.
- *Fax:* (202) 566-9744, Attention Docket No. EPA-HQ-RCRA-2005-0018.
- *Mail:* RCRA Docket No. EPA-HQ-RCRA-2005-0018, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* RCRA Docket No. EPA-HQ-RCRA-2005-0018, EPA West Building, Room 3334, 1301 Constitution Ave., NW., 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-RCRA-2005-0018. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The

<http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the RCRA Docket is (202) 566-0270.

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Hazardous Waste Identification Division, Office of Solid Waste (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308-0005; fax number: (703) 308-0514; e-mail: coughlan.laura@epa.gov.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. *General Information*
 - A. *List of Acronyms Used in This Proposed Rule*
 - B. *What are the statutory authorities for this proposed rule?*
 - C. *Does this proposed rule apply to me?*
 - D. *What is the purpose of this proposed rule?*

- II. Background
 - A. OECD Revisions
 - B. SLAB Revisions
 - C. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262
 - D. Import Revisions
- III. Summary of This Proposed Rule and Changes
 - A. Changes to 40 CFR Part 262, Subpart E
 - B. Changes to 40 CFR 262.60(e), Subpart F
 - C. Changes to 40 CFR Part 262, Subpart H
 - D. Changes to 40 CFR 264.12(a)(2) and 40 CFR 265.12(a)(2)
 - E. Changes to 40 CFR 264.71(a)(3) and 40 CFR 265.71(a)(3)
 - F. Changes to 40 CFR 266.80(a)
 - G. Changes to 40 CFR 271.1
- IV. Costs and Benefits of the Proposed Rule
 - A. Introduction
 - B. Analytical Scope
 - C. Cost Impacts
 - D. Benefits
- V. State Authorization
 - A. Applicability of Rules in Authorized States
 - B. Effect on State Authorization
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act of 1995
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

- I. National Technology Transfer Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. List of Acronyms Used in This Proposed Rule

Acronym	Meaning
BCI	Battery Council International
CBI	Confidential Business Information
CERCLA ..	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
LAB	Lead-Acid Battery
NAICS	North American Industrial Classification System
NTTAA	National Technology Transfer and Advancement Act
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
SIC	Standard Industrial Classification
SLAB	Spent Lead-Acid Battery

Acronym	Meaning
SBREFA ..	Small Business Regulatory Enforcement Fairness Act
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act

B. What are the statutory authorities for this proposed rule?

The authority to propose this rule is found in sections 1006, 1007, 2002(a), 3001–3010, 3013–3015, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6906, 6912, 6921–6930, 6934–6936, and 6938.

C. Does this proposed rule apply to me?

1. OECD Revisions

The OECD revisions in this proposed rule affect all persons who export or import hazardous waste, export or import universal waste, or export spent lead-acid batteries (SLABs) destined for recovery operations in countries belonging to the Organization for Economic Cooperation and Development (OECD), except for Mexico and Canada. Any transboundary movement of hazardous wastes between the United States and either Mexico or Canada will continue to be regulated by their respective bilateral agreements and applicable regulations. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093
Materials Recovery Facilities	562920	4953

2. SLAB Revisions

The SLAB revisions in this proposed rule affect all persons who export

SLABs for reclamation in any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Batteries, automotive, merchant wholesalers	423120	5013
Lead-acid storage batteries, manufacturing	335911	3691
Automotive Parts, Accessories, and Tire Stores	441310	5013
Tire Dealers	441320	5014
All other General Merchandise Stores	452990	5399
New Car Dealers	441110	5511

Industry sector	NAICS	SIC
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
Marinas	713930	4493
General Freight Trucking, Long-Distance, TL	484121	4213
General Freight Trucking, Long-Distance, LTL	484122	4213
Specialized Freight Trucking	484200	4213
Freight Carriers (except air couriers), Air Scheduled	481112	4512
Freight Charter Services, Air	481212	4522
Freight Railways, Line-Haul	482111	4011
Freight Transportation, Deep Sea, to and from Domestic Ports	483113	4424
Freight Transportation, Deep Sea, to or from Foreign Ports	483111	4412

3. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262

The exception report change to 40 CFR part 262, subpart E and subpart H

of this proposed rule affect all persons who export hazardous waste, universal waste, or SLABs to any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339	39
Scrap and Waste Materials	423930	5093

4. Import Revisions

The import revisions in this proposed rule affect all persons importing hazardous waste from a foreign country

that must comply with 40 CFR part 262, subpart F, and all facilities receiving imported hazardous waste from a foreign country that must comply with either 264.71(a)(3) or 265.71(a)(3). This

includes those hazardous waste import shipments originating in OECD countries, as well as in non-OECD countries. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
General Freight Trucking, Long-Distance, TL	484121	4213
Scrap and Waste Materials	423930	5093
Materials Recovery Facilities	562920	4953

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

D. What is the purpose of this proposed rule?

1. OECD Revisions

This proposed rule is intended to implement the OECD's "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20" (hereinafter referred to as the Amended 2001 OECD Decision), which amended the OECD Decision (1992) on the same subject. The purpose of these revisions was to encourage

consistency and harmonization between the OECD and the Basel Convention,¹ which in turn, promotes economic

¹ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 170 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. More information on the Basel Convention may be found at <http://www.basel.int>.

efficiency and the recovery of waste in an environmentally sound manner.

The Amended 2001 OECD Decision was supported by the United States and imposes legally binding commitments on the United States pursuant to Articles 5(a) and 6 of the OECD Convention. By consenting to the Decision, the United States Government has agreed to promulgate regulations necessary to ensure that the United States can uphold the agreement.

Further, this proposed rule clarifies certain regulations to articulate more explicitly EPA's original intent in those regulations and to eliminate any confusion on the part of the regulated community.

2. SLAB Revisions

EPA also proposes to amend the RCRA hazardous waste regulations for SLABs specified in 40 CFR part 266, subpart G by requiring notification and consent for the export of SLABs in order to ensure that SLABs are sent to reclamation facilities in countries that can manage them in an environmentally sound manner. The notification and consent requirements are intended to:

- (1) Reduce potential risk to human health and the environment, including potential risk from the transboundary movement of pollution from other countries to the U.S., and
- (2) harmonize the notice and consent procedures with international practice (see II.B.4) and with the RCRA universal waste regulations for the export of SLABs, resulting in a more uniform practice for notification and consent for SLABs.

Notification of potential exports of hazardous waste destined for recovery in another country is a key component of multilateral environmental systems for appropriate governmental oversight to ensure proper management of the waste. The notification mechanism allows for all concerned countries (i.e., exporting, importing, and transit) to determine whether the hazardous waste can be handled safely based on the requirements of their waste management systems. Specifically, the importing country has the opportunity to confirm that the particular facility that is designated to receive the waste is qualified to manage it in a safe and environmentally sound manner, and has all appropriate approvals, permits, or licenses. Furthermore, the notice and consent process is the fundamental tool that is employed in transboundary waste arrangements to provide business certainty for legitimate trade.

Risks to human health and the environment derived from improper SLAB recycling techniques are of major concern internationally. The Basel

Convention has developed two guidance documents^{2,3} to assist governments, transporters, and recyclers to achieve environmentally sound management of SLABs. Indeed, the Basel Convention considers transboundary movement of SLABs to be "illegal traffic" if it occurs without prior notification. Similar guidance was developed by the Commission for Environmental Cooperation⁴ (CEC) for use by North American countries to promote sound management of SLABs.⁵ A 1996 OECD Ministerial Declaration on risk reduction from lead called on Member countries to take domestic and international action to reduce human exposure to lead from a variety of sources.⁶ Further, the Report of the Special Rapporteur of the U.N. Commission on Human Rights⁷ expressed concerns that "the United States system does not impose export regulations on SLABs destined for recycling," and suggests that "the recycling of lead-acid batteries is one of the greatest potential sources of risk, especially for exposed workers in the informal sector in many developing countries."

For economic and efficiency reasons, some highly industrialized countries may ship their SLABs to less industrialized countries for SLAB breaking, draining, component separation, slag generation and lead refining. Human health and environmental risk issues can arise when these recycling processes are performed with insufficient human health or environmental safety controls. The results could include: (1) Significant increases in elevated blood lead levels in facility workers and their

families; (2) increases in uncontrolled releases of lead-laden slag to soil, surface water and ground water sources; and (3) lead air-emissions from lead smelting without the proper air-emissions controls.

EPA would like to focus on the use of preventative measures to decrease the proportionate risks to human health and the global environment. There are inherent human health and environmental hazards associated with a significant amount of SLABs being exported across borders without the knowledge and consent of receiving countries and/or SLABs being exported to countries with substandard smelting infrastructures. Amending the current RCRA hazardous waste regulations to include the notification and consent requirements would help ensure that SLABs are exported to countries with the capacity to handle them in an environmentally sound manner and to aid countries with tracking the movements and life-cycle management of SLABs inside their borders. EPA believes that the notification and consent approach is an effective way of preventing the export of SLABs to countries and to facilities that do not have the capability of safely managing the SLABs by providing the receiving country with the necessary information about the proposed shipment and requiring its consent before the export can proceed. In addition, by providing the receiving country with this information, they can monitor and track the export and the facility's management of the SLABs for safe management. The purpose of the notification and consent requirements for SLABs destined for reclamation in this proposed rule is consistent with the purpose of the notification and consent requirements in RCRA section 3017. Congress, in enacting section 3017, considered it important to require notification and consent for exports of hazardous wastes. The legislative history for section 3017 indicates that Congress felt that prior notification of an export to the receiving country would allow that country to make an informed decision as to whether it would accept the waste and, if so, how it would safely manage that waste. Congress noted that problems, such as harm to human health and the environment arise when wastes are sent to countries that do not want to receive them, or lack sufficient information to manage them properly.

EPA believes that the potential reduction in risk to human health and the environment with this proposed modification will outweigh the incremental increase in burden to SLAB exporters. Moreover, because the

² *Basel Convention Training Manual: National Management Plans for Used Lead Acid Batteries*, SBC No. 2004/5, 2004.

³ *Technical Guidelines for the Environmentally Sound Management of Waste Lead-acid Batteries*, SBC No. 2003/9, 2003.

⁴ The Commission for Environmental Cooperation is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA).

⁵ *Practices and Options for Environmentally Sound Management of Spent Lead-acid Batteries within North America*, Commission for Environmental Cooperation, December 2007.

⁶ *The Global Pursuit of the Sound Management of Chemicals*, The World Bank, February 2004.

⁷ *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, U.N. Commission on Human Rights, Economic and Social Council, E/CN.4/2003/56/Add.1, 10 January 2003, p. 17.

notification and consent requirements are intended to ensure that the receiving country has the necessary advance knowledge of a proposed shipment of SLABs to a facility in that country, the country can properly consent (or object) to this shipment based on its knowledge of the capabilities of the particular facility and its ability to manage the batteries in a safe and environmentally sound manner.

3. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262

EPA proposes to amend the exception reporting requirements in 40 CFR part 262, subparts E and H, to specify that all exception reports be submitted to the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator.⁸ The Agency proposes this change because it believes that a more specific address should assist in proper delivery of the exception report to the appropriate EPA office. The more general requirement in the existing regulation to send this report to the "Administrator" may have not provided sufficiently specific instruction for those exporters trying to notify EPA of returned shipments, which could reduce EPA's ability to provide oversight on such exports. Directing that all exception reports submitted to EPA pursuant to the requirements in 40 CFR part 262, subparts E and H, be sent to a specific address should ensure better oversight of (1) return shipments into the U.S. and (2) compliance with the exception report requirements without additional regulatory burden.

4. Import Revisions

Finally, EPA proposes to amend the import requirements specified in 40 CFR part 262, subpart F. This change would require that the U.S. importer provide the transporter with a copy of documentation provided by EPA, confirming EPA's consent to the hazardous waste import under a specific notice. This documentation would then accompany each RCRA hazardous waste manifested import shipment and be submitted by the receiving facility in the U.S. to EPA along with the RCRA hazardous waste manifest in accordance with §§ 264.71(a)(3) and 265.71(a)(3). While EPA currently requires that receiving facilities in the U.S. submit a copy of the hazardous waste manifest to EPA to document individual import

shipments, it has been difficult for EPA to match an individual manifest for a hazardous waste import shipment with the related notice of intent to export from a foreign country for which EPA has provided consent. One major reason for this difficulty is because a given destination facility in the U.S. could be receiving the same hazardous waste from the same foreign exporter under more than one notice. Adding this requirement will enable EPA to better match the individual import shipments against the related notice from the foreign exporting country for which EPA has provided consent, and facilitate our oversight of such imports.

II. Background

A. OECD Revisions

1. What is the OECD?

The OECD is an international organization established in 1960 to assist Member countries in achieving sustainable economic growth, employment, and an increased standard of living, while simultaneously ensuring the protection of human health and the environment. OECD Member countries are concerned with a host of international socio-economic and political issues, including environmental issues. To address these issues, the OECD Council may negotiate Council Decisions, which are international agreements that create binding commitments on the United States under the terms of the OECD Convention, unless otherwise provided in the Articles of the 1960 Convention. One such Council Decision addresses the transboundary movement of waste, which is the subject of this proposed rule. There are currently thirty OECD Member countries: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD country Web site for each Member country may be found at <http://www.oecd.org/infobycountry/>.

2. What OECD Decision formed the basis for the existing regulations in 40 CFR part 262, subpart H?

On March 30, 1992, the OECD Council adopted the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" (hereinafter referred to as the 1992 Decision), which applied to the

transboundary movements of wastes destined for recovery operations between OECD Member countries. The 1992 Decision provided a framework for OECD Member countries to control the transboundary movement of recoverable wastes in an environmentally sound and economically efficient manner.

3. Why did EPA establish the existing regulations in 40 CFR part 262, subpart H?

Due to the legally binding nature of the 1992 Decision, the United States, as an OECD Member country, was required to implement the terms of the decision in accordance with Articles 5(a) and 6 of the OECD Convention. (A copy of the OECD Convention is included in the docket to this proposed rule.) In order to implement the specific provisions of the 1992 Decision, EPA published a final rule in the **Federal Register** entitled, "Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations" (61 FR 16289, April 12, 1996)(hereafter referred to as EPA's OECD rule). These regulations appear primarily in 40 CFR part 262, subpart H.

4. What OECD Decisions form the basis of the revisions in this proposed rule?

On June 14, 2001, the OECD Council amended the 1992 Decision by passing "Revision of Decision C(92)30/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations" (hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of the Basel Convention and to eliminate duplicative activities between the two international organizations as much as practical. These changes include significant revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new certificate of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in

⁸ The Office of Enforcement and Compliance Assurance is the office within EPA that implements the notice and consent scheme for hazardous waste transboundary shipments.

May 2002 as C(2001)107/FINAL. Finally, on March 30, 2004, the OECD Council adopted C(2004)20 (hereafter referred to as the 2004 OECD Amendment), which updated the OECD waste lists, entitled "Appendix 3: List of Wastes Subject to the Green Control Procedure" (hereafter referred to as the Green list) and "Appendix 4: List of Wastes Subject to the Amber Control Procedure" (hereafter referred to as the Amber List). To the extent possible, the Green and Amber Lists were revised based on the amendments made to Annexes II, VIII, and IX of the Basel Convention in November 2003. The OECD Council decisions are collectively referred to as the Amended 2001 OECD Decision.

5. How does EPA propose to revise the existing regulations to implement the latest OECD Decisions?

This rule proposes to amend EPA's OECD rule to reflect the procedural and substantive amendments in the 2001 OECD Decision, the applicable changes to the new notification and movement documents presented in the 2001 OECD Addendum, and the changes to the OECD waste lists as presented in the 2004 OECD Amendment, collectively referred to as the Amended 2001 OECD Decision. This proposed rule also seeks to clarify certain existing regulatory provisions that have been identified as potentially ambiguous to the regulated community.

As noted previously, OECD Council Decisions are international agreements that create binding commitments on the United States, unless otherwise provided in the Articles to the 1960 Convention. Therefore, by consenting to the Amended 2001 OECD Decision, the United States Government has agreed to establish legal measures necessary to ensure that the United States can uphold the agreement. EPA believes that RCRA contains adequate authority to promulgate the requirements of the Amended 2001 OECD Decision.

It is important to recognize that the OECD Decision allows a Member country to determine if a waste on an OECD list is hazardous based on its "national procedures." EPA has determined that a waste is hazardous under U.S. "national procedures"—and therefore subject to the OECD provisions of Subpart H—if the waste meets the following requirements under RCRA: (a) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and (b) is subject to either the Federal hazardous waste manifesting requirements in 40 CFR 262, or to the universal waste management standards of 40 CFR part 273, or to State

requirements analogous to Part 273. This determination was set forth in § 262.89(a), and additional discussion on how this provision impacts transboundary movements of wastes subject to RCRA exemptions, exclusions and recycling provisions can be found in the April 12, 1996, preamble to the original OECD rule (61 FR 16290–16316).

6. How does EPA propose to implement future OECD revisions?

(a) Changes to OECD Member Country List

Qualified countries may be invited to accede to the OECD Convention as new Members. The OECD Convention defines qualified countries as those that have demonstrated the basic values shared by all Members: An open market economy, democratic pluralism, and respect for human rights. Any decision to invite a new country to become a Member of the OECD must be unanimous, although abstentions may be allowed. Thus, no new Member may be admitted over the objection of the United States (or any other Member).

In order to accommodate changes in OECD membership as quickly as possible, EPA intends to publish in the **Federal Register** any future amendments to the list of OECD Member countries set forth in § 262.58(a)(1), as the OECD adds new Member countries or otherwise amends its list in the future. EPA intends to publish notices of these future amendments to § 262.58(a)(1) as a final rule without prior notice and opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these future amendments without prior notice and comment. EPA believes notice and an opportunity for comment on future amendments to § 262.58(a)(1) to reflect the updates to the OECD list of Member countries would be unnecessary, because the United States, as an OECD Member country, is legally obligated to implement OECD Decisions with respect to all OECD Member countries.

(b) Changes to OECD Waste List

The OECD waste list is incorporated by reference and cited in § 262.89(d). If the OECD amends its waste list in the future by decision of the OECD Council (with the concurrence of the United States), EPA intends to publish notices of these amendments in the **Federal Register** as a final rule without prior notice and an opportunity for comment. EPA believes that the Agency would be

able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these future amendments without prior notice and comment because the purpose of § 262.89(d) is solely informational—to provide an up-to-date reference of the OECD list. Public comment on such updates is unnecessary, as EPA would have no discretion to modify the OECD list. As discussed above, U.S. national procedures, rather than the OECD list, ultimately determine the applicability of Subpart H, recognizing that the OECD list will be relevant for exports to other OECD members.

B. SLAB Revisions

1. What are SLABs?

Lead-acid batteries are secondary, wet cell batteries that contain liquid and can be recharged for many uses. They are the most widely used rechargeable batteries in the world and are mainly used as starting, lighting, and ignition (SLI) power batteries found in automobiles and other vehicles. A rechargeable SLAB is spent if it no longer performs effectively and cannot be recharged. Battery failure is most commonly attributed to water loss and grid corrosion during normal use. SLABs are considered both solid and hazardous wastes under Subtitle C of RCRA, because they are classified as spent materials that exhibit the toxicity characteristic for lead, and the corrosivity characteristic for the sulfuric acid electrolyte in the battery.

Lead-acid batteries are typically composed of an outside plastic casing and six inner cells containing lead strips and positive and negative lead terminals. Each cell is made up of two lead frameworks, the positive plate being lead dioxide and the negative plate being spongy lead (a metallic lead in a high-surface-area porous structure). Each cell is filled with sulfuric acid as the electrolyte. When the battery is in use, the spongy lead, sulphuric acid, and lead dioxide react to produce an electrical current. Both electrodes are converted to lead sulfate, a process which is reversed during recharge.

2. How are SLABs currently managed?

Currently, SLABs are either reclaimed for their lead value or disposed of. The Battery Council International (BCI) reported a 99.2 percent domestic SLAB reclamation rate for the years 1999–2003, making lead-acid batteries one of the most recycled consumer products. When a SLAB is collected, it is sent to a reclaimer where the SLABs are cracked through various means, such as

a hammermill in order to separate out the lead, battery casing, plate separators, and sulfuric acid components into recycling streams and disposal streams. Specifically, the lead plates, lead oxide paste and other lead parts are cleaned and then melted together in smelting furnaces to produce lead ingots along with residual lead dross and slag. The residual lead dross and slag may be reclaimed further or disposed of in a landfill. Used sulphuric acid can be (1) Sent for acid regeneration, where the acid is cleaned for re-use as electrolyte in the battery manufacturing process, (2) neutralized and released into a public sewer system once it meets Clean Water Act standards, or (3) converted into sodium sulfate, an odorless white powder that's used in laundry detergent, glass and textile manufacturing. If it is a plastic-cased battery, the plastic is either cleaned and recycled as new battery casings or disposed of at a landfill. If the battery casing is made of rubber or other materials, it can be used as a fuel at the smelter. Other materials from batteries are either recycled or disposed of in a landfill.

Lead is a highly toxic heavy metal naturally occurring in the environment. For this reason, proper management of lead and lead-containing products is essential to the protection of human health and the environment. In the U.S., the Occupational Safety and Health Administration (OSHA) has developed standards to address and minimize workplace exposure to lead (29 CFR § 1910.1025). These standards establish permissible exposure limits; exposure monitoring, respiratory protection and safety procedures; and proper warning and sign-age requirements for facilities processing lead. Proper ventilation, training and safety procedures also are necessary. In less developed countries, these precautions may be overlooked, leading to dangerous conditions. (See "A Study of the Lead-Acid Battery Industry and Spent Lead-Acid Battery Exports," June 2003, a copy of which is included in the RCRA docket established for this proposed rule.)

Recent data show that the primary factors influencing decisions to export SLABs from the United States include the price of scrap lead, worldwide supply and demand for lead, and the relative price of virgin lead compared to the price of scrap lead. BCI estimates that in 1995, approximately 1,078,674 tons of recoverable lead was available from batteries consumed domestically. BCI also reports that, based on Department of Commerce data, approximately 104,614 tons of battery scrap lead were exported in 1995. In contrast, approximately 269,171 metric

tons of SLABs were exported in 2006 based on more recent data from the International Trade Commission, Environment Canada, and Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT). Such a large increase in exports may be in large part due to recent increases in the domestic and international price of lead.

According to the annual "Mineral Commodity Summaries" published by the U.S. Geological Survey (USGS), the average price of lead for North American producers increased by 77% from 43.7 cents/pound in 1999 to 77.8 cents/pound in 2006. The average price as reported on the London Metal Exchange increased by 154% during those same years from 22.8 cents/pound to 58.0 cents/pound. In addition, while export shipments destined for locations in many countries are subject to duties or tariffs on any exported SLABs, Canadian and Mexican importers are allowed, under the conditions of the North American Free Trade Agreement (NAFTA), to import SLABs without the usual surcharge. Indeed, data show that Canada and Mexico are the major destination countries to which U.S. SLABs have been exported in recent years. For example, in 2006 U.S. SLAB exports to Mexico and Canada were estimated to be 199,000 metric tons and 66,000 metric tons, respectively (based on data from Mexican and Canadian government sources). Comparing this information to data from the U.S. International Trade Commission, it is estimated that only 1.8% of SLAB exports are destined for countries other than Mexico or Canada. (See the EPA Cost Assessment⁹ prepared in support of this proposed action.)

3. How are SLABs currently regulated in the United States?

Under the current Federal hazardous waste regulations established pursuant to RCRA, SLABs are hazardous wastes if the batteries exhibit one or more of the characteristics of hazardous waste provided in 40 CFR 261, subpart C (e.g., corrosivity (D001), or toxicity for lead (D008)). SLABs typically exhibit the toxicity characteristic for lead and, therefore, are defined as hazardous wastes.

(a) SLABs Sent for Disposal Within the United States

If a generator disposes, rather than reclaims, SLABs, the SLABs would need to be managed in compliance with the Subtitle C hazardous waste management

regulations, which could include the part 273 universal waste rules. However, in all instances, SLABs that are disposed of must be managed at a RCRA Subtitle C disposal facility and are subject to the Land Disposal Restriction requirements of 40 CFR part 268.

The universal waste regulations, promulgated on May 11, 1995, were created to provide a streamlined set of management regulations governing the collection and management of certain widely generated hazardous wastes, such as spent batteries. For the purposes of the universal waste regulations, the definition of "battery" includes SLABs. While SLABs managed as universal waste may be drained of sulphuric acid, the battery casings must be intact. SLABs that have partially or wholly crushed casings cannot be managed as universal waste.

A universal waste handler is required to ensure that the SLABs do not spill or leak and that they are stored in a structurally sound container. In addition, depending upon the amount of SLABs that are accumulated, a battery handler may be required to track shipments of the SLABs sent off-site for reclamation or other management. Universal waste handlers are not allowed to treat their waste; however, they can conduct certain activities (e.g., sorting, regeneration¹⁰, etc.) provided the battery casings remain intact.

Other general provisions to which all universal waste handlers are subject include labeling/markings, accumulation time limits, employee training, and response to releases of hazardous waste. Off-site shipments of universal wastes do not require a hazardous waste manifest, provided they are sent to another universal waste handler or a specified destination facility, and are shipped by an authorized universal waste transporter.

(b) SLABs Sent for Reclamation Within the United States

When reclaimed, SLABs are exempt from most of the RCRA Subtitle C hazardous waste regulations, but are subject to the regulations in part 266, subpart G. (See 40 CFR § 261.6(a)(2)(iv).) Alternatively, they can also be managed as a universal waste and subject to the universal waste regulations in 40 CFR part 273. Thus, generators that send SLABs off-site for reclamation may choose to manage their SLABs either as a universal waste, in accordance with

⁹ Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S.

¹⁰ Regeneration under 40 CFR part 266, subpart G, includes only replacing drained electrolyte fluids and replacing "bad" battery cells. (See 48 FR at 14496.)

the management standards in 40 CFR part 273, or in accordance with the management standards in 40 CFR part 266, subpart G.

Under the provisions of 40 CFR part 266, subpart G, persons who generate, collect, transport, or store SLABs for direct regeneration or reclamation are exempt from the bulk of the RCRA hazardous waste regulations (40 CFR parts 262 through 266, 270, 124 and the EPA notification and identification number requirements). However, 40 CFR part 266, subpart G imposes certain requirements on reclaimers of SLABs who do not store prior to reclamation, and on facilities that store SLABs destined for reclamation, but do not conduct any reclamation. In addition, owners or operators of facilities that both store and reclaim SLABs are required to comply with the EPA notification and identification number requirements and all applicable hazardous waste management facility provisions in parts 264/265, 270, and 124, and are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.

4. What international agreements apply to the export of SLABs?

There are two major international agreements that expressly address the export of SLABs: (1) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention); and (2) the Amended 2001 OECD Decision (see II.A.4 for more information). This proposal would harmonize the EPA SLAB export requirements with both of these international agreements.

As noted in footnote 1, the Basel Convention is a multilateral international agreement governing the transboundary movements of hazardous wastes. Among other things, the Basel Convention includes a requirement for notice and written consent for transboundary movements of hazardous waste between trading countries. SLABs are covered under the Basel Convention as a hazardous waste and are thus subject to the notice and consent requirements of the Basel Convention. The United States is a signatory to the Convention, but has not yet ratified it and is therefore not legally bound to its requirements.

The Amended 2001 OECD Decision regulates the transboundary movements of hazardous wastes (e.g. wastes subject to Amber control procedures) destined for recovery within OECD Member countries. The Amended 2001 OECD Decision lists SLABs, whether whole or

crushed, as subject to the Amber control procedures.

Currently, under the RCRA hazardous waste regulations, SLABs can be managed either in accordance with the special regulations under 40 CFR part 266, subpart G or in accordance with the universal waste regulations, as discussed above. Under part 266, subpart G, SLABs that are destined for reclamation are currently exempt from the RCRA export requirements in 40 CFR part 262, subpart E and subpart H (including the notice and consent requirements).

On the other hand, under the universal waste regulations, exporters of SLABs for reclamation are subject to the export requirements in 40 CFR part 273 (including the notice and consent requirements) or, if the SLABs will be exported to an OECD Member country for recovery, the export requirements (including notice and consent) in 40 CFR part 262, subpart H, apply. In addition, even in situations where U.S. exporters are not subject to the notice and consent requirements, U.S. exporters may still be required to notify the importing OECD Member country of their intention to export batteries, pursuant to contracts with foreign consignees. This is because SLABs, identified by the Amended 2001 OECD Decision as wastes subject to Amber control procedures, are generally considered to be hazardous waste under the national procedures of the importing Member countries.

5. How does EPA propose to revise the SLAB regulations under 40 CFR part 266, subpart G?

EPA proposes to amend the SLAB regulations under 40 CFR part 266, subpart G, to require that exporters and transporters handling SLABs destined for reclamation in a foreign country to comply with the same requirements specified in the universal waste regulations under 40 CFR part 273. Specifically, an exporter who sends the SLABs to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) would have to:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), 262.56(b) and 262.57; (b) export such SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR part 262 of this chapter; and (c) provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export. In addition, a transporter transporting a shipment of

SLABs to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) would not be able to accept a shipment if the transporter knew the shipment does not conform to the EPA Acknowledgement of Consent, and would have to ensure that: (a) a copy of the EPA Acknowledgement of Consent accompanies the SLAB export shipment; and (b) the shipment is delivered to the facility designated by the person initiating the SLAB export shipment.

For SLABs destined for reclamation in OECD countries specified in 40 CFR 262.58(a)(1), exporters and transporters would be subject to the requirements of 40 CFR part 262, subpart H, the requirements governing hazardous waste shipments to OECD countries.

C. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262

EPA proposes to replace "EPA Administrator" with "the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460" in both § 262.55 and in § 262.87(b).

By providing a specific address for the submission of all exception reports required by 40 CFR part 262, subparts E and H, EPA can ensure better oversight of (1) return shipments to the U.S. and (2) compliance with the exception reporting requirements without any additional regulatory burden for U.S. exporters. In this proposed rule, EPA is making very clear that submission of these export exception reports must be to the same specific EPA address that receives all export notifications and export annual reports, and with no substitution for comparable State agencies. States that are interested in receiving a parallel copy of the exception report will still be able to require the submission of a copy to their State Director in addition to sending it to the above federal address.

D. Import Revisions

EPA proposes to amend the import requirements specified in § 262.60(e) to require that the U.S. importer provide the transporter with a copy of the documentation confirming EPA's consent to the hazardous waste import, specified under a notice submitted by the competent authority of the country of export. This documentation must accompany each RCRA hazardous waste shipment and be submitted by the U.S. receiving facility to EPA along with the RCRA hazardous waste manifest as

required under §§ 264.71(a)(3) and 265.71(a)(3).

While EPA currently requires that U.S. receiving facilities submit a copy of the hazardous waste manifest to EPA to document individual hazardous waste import shipments, it has proved difficult to match individual hazardous waste import shipments against a given approved notice of intent to export from a foreign country. In part, this is because a given destination facility in the United States could be receiving the same hazardous waste from the same foreign exporter under more than one approved notice. Adding this requirement will enable EPA to match the submitted RCRA hazardous waste manifests for individual import shipments against the approved import notice that typically covers the twelve months of imports. Being able to do so will enable EPA to determine when any import shipments claiming coverage under that specific notice would or would not be in accordance with the terms of the approved notice, thus improving our oversight of such imports.

EPA currently responds to specific notices of intent to export hazardous waste from a foreign country into the United States with either a written response (e.g., written consent or objection) or a tacit consent. Tacit consents are allowable for imports subject to EPA's OECD regulations, as specified in 40 CFR part 262, subpart H. For such imports, the exporting country may assume tacit consent to the proposed shipments by EPA if no written response from EPA has been received by the exporting country thirty working days from the date EPA sends the exporting country a letter acknowledging receipt of the notice. Because EPA's consents are currently either tacit or sent in writing only to the competent authority of the exporting country, EPA will need to provide or otherwise make available to U.S. importers documentation confirming the Agency's consent. EPA is considering and soliciting comments on what would provide adequate documentation of the Agency's written or tacit consent to a specific notice, and how best to provide that information to U.S. importers.

III. Summary of This Proposed Rule and Changes

A. Changes to 40 CFR Part 262, Subpart E

This proposed rule amends the exception reporting requirements in § 262.55 to specify that all exception reports be submitted to the Office of Enforcement and Compliance

Assurance's Office of Federal Activities in Washington, DC, rather than to the Administrator. In addition, the proposal also updates § 262.58(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in one of the OECD Member countries listed in § 262.58(a)(1) are subject to the requirements of subpart H. Finally, the proposal adds language in § 262.58(b) of subpart E to clarify that hazardous waste exports subject to subpart E and hazardous waste imports subject to subpart F are not subject to subpart H in order to reduce confusion for U.S. exporters and importers.

B. Changes to 40 CFR 262.60(e), Subpart F

This proposed rule includes the requirement that a U.S. importer provide the transporter a copy of the documentation confirming EPA's consent to the import of hazardous waste when the importer provides the transporter with an additional copy of the manifest.

C. Changes to 40 CFR Part 262, Subpart H

All but the last three changes listed below are necessary to conform to the revisions in the Amended 2001 OECD Decision. These changes range from substantive revisions and amendments to changes in terminology to simple editorial changes. Collectively, these changes serve to implement the Amended 2001 OECD Decision, as well as clarify certain sections that were previously ambiguous to the regulated community. Changes to 40 CFR part 262, subpart H include:

1. Changes in Terminology

In the Amended 2001 OECD Decision, the OECD Council updated several terms and definitions used in the 1992 Decision. EPA believes that these changes do not result in substantive changes to the intent of the requirements, but merely bring them in line with current terminology used in practice and in other international agreements. To limit any unnecessary confusion between the U.S. regulations and those of other OECD Member countries and to promote consistency with the Amended 2001 OECD Decision, this proposed rule adopts these changes in terminology. Thus, EPA proposes to change the following terminology:

- (a) "Transfrontier" to "transboundary";
- (b) "Tracking document" to "movement document";

- (c) "Amber-list controls" to "Amber control procedures";
- (d) "Notifier" to "exporter"; and
- (e) "Consignee" to "importer."¹¹

2. The Number of Different Levels of Control Is Reduced From Three (Green, Amber, and Red) to Two (Green and Amber) and the Waste Lists Have Been Updated

The 2001 OECD Decision replaced the OECD three-tier waste list (Green, Amber, Red) system with a two-tiered system (Green and Amber) to conform to the Basel Convention waste lists more closely. Further, the revised OECD waste lists, as provided by the 2004 OECD Amendment, better correspond to those of the Basel Convention. Accordingly, we are proposing to make these same conforming changes to EPA's OECD rule.

Wastes subject to the Green control procedures are those wastes listed in Parts I and II of Appendix 3 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annex IX of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Green control procedures, which the OECD has assessed as not posing any risk to human health or the environment under its risk criteria.

Wastes subject to the Amber control procedures are those wastes listed in Parts I and II of Appendix 4 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annexes II and VIII of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Amber control procedures, which the OECD has assessed as posing a risk to human health or the environment under its risk criteria. Further, all wastes formerly appearing on the Red list would be subject to the Amber control procedures.

U.S. importers and exporters of hazardous waste subject to the subpart H requirements of 40 CFR part 262 should be aware that wastes listed in Part I of both the new OECD Amber and Green waste lists have not retained their OECD waste codes. Consequently, the relevant Basel waste codes should be used instead. However, wastes listed in Part II of both the new OECD Amber and Green waste lists do retain their original OECD waste codes, as listed in the 1992 Decision. This two-part system is

¹¹ The change from "consignee" to "importer" is only being made in 40 CFR part 262 subpart H, and does not affect the use of consignee in 40 CFR part 262 subpart E.

necessary to ensure that wastes not yet explicitly listed under the Basel Convention will continue to have the same level of control applied to them when destined for recovery under the Amended 2001 OECD Decision.

Both the Green waste list and the Amber waste list are cited in § 262.89. This rule proposes to amend § 262.89(d) to incorporate by reference the most current OECD waste lists from the Amended 2001 OECD Decision. Further, the elimination of the Red list allows for the consolidation of the provisions currently found in § 262.89(b) and (c), which appears in the new proposed § 262.89(b).

3. References to Unlisted Wastes Have Been Eliminated in Favor of “Wastes Not Covered in Appendices 3 and 4 of the OECD Decision”

Section 262.83(d) currently addresses the general notification requirements for unlisted wastes. This rule first proposes to renumber this section to § 262.83(c) since the current § 262.83(c) addresses “red-list wastes” and is no longer needed. This proposal also replaces the term “unlisted wastes” with “wastes not covered in Appendices 3 and 4 of the OECD Decision,¹²” so that wastes not on these lists are not automatically subject to the Amber control procedures. Rather, “wastes not covered in Appendices 3 and 4 of the OECD Decision” will be subject to the domestic rules and regulations of the countries of concern.

4. Transboundary Movements May Now Qualify for a Laboratory Analysis Exemption

The 1992 Decision and EPA’s OECD rule did not include a provision that would exempt waste samples destined for laboratory analyses. The Amended 2001 OECD Decision, however, would allow Member countries to decide through their domestic laws and regulations that waste samples normally subject to the Amber control procedures will only be subject to the Green control procedures if such samples are destined for laboratory analyses to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. Therefore, we are proposing that if the waste sample is destined for laboratory analyses and meets certain specified conditions, then the waste is subject to the Green control procedures

(e.g., the existing controls normally applied in commercial transactions).

The Amended 2001 OECD Decision provides that the amount of waste qualifying for this exemption shall not be more than the minimum quantity reasonably needed to perform the analyses adequately in each particular case, but can never exceed twenty-five kilograms (25 kg /55 lbs). Analytical samples also must be appropriately packaged and labeled and must be carried out under the terms of all applicable international transport agreements. Furthermore, any transboundary movement of such samples through non-OECD Member countries shall be subject to international law and to all applicable national laws and regulations. Thus, the proposed rule allows for waste samples that are sent for laboratory analyses to be exempt from the Amber control procedures provided they meet the same conditions as set forth in the Amended 2001 OECD Decision.

Information on exemptions and any other national requirements concerning movements of waste for laboratory analyses is available to the public via a Web site with information compiled by the OECD Environment Directorate, which can be accessed at <http://www.oecd.org/env/waste/>.

U.S. exporters should also be aware that even if their shipments qualify for the laboratory analyses exemption, some Member countries may elect to apply the Amber control procedures to such shipments, requiring the exporter of a waste sample for laboratory analyses to inform the competent authorities of such a movement. U.S. exporters should check with the competent authorities of each country to find out if they require the Amber control procedures for a sample that would qualify for the laboratory analyses exemption.

5. Recovery Facilities Must Submit a Certificate of Recovery

This proposed rule would implement the Amended 2001 OECD Decision’s requirement that a duly authorized representative of the recovery facility submit a certificate of recovery to all interested parties (e.g., exporter, country of export, country of import), ensuring recovery of the waste has been completed. A valid certificate of recovery is defined as a written and dated statement that affirms that the waste materials were recovered and that any residuals generated from the recovery operation have been disposed of in the manner agreed to by the parties

to the contract.¹³ This proposed rule also requires, as does the Amended 2001 OECD Decision, that the recovery facility send the certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of waste by the recovery facility. Finally, this proposed rule requires that the recovery facility must send copies of the certificate of recovery to the exporter and competent authorities of the countries of export and import by mail, e-mail followed by mail, or fax followed by mail. This proposed rule incorporates the certificate of recovery provisions of the Amended 2001 OECD Decision in § 262.83(e).

The Amended 2001 OECD Decision states that the completion of block 18 of the OECD movement document, and the submission of signed copies to the exporter and relevant competent authorities, fulfils the certificate of recovery requirement. Although the OECD movement document is recommended, the Amended 2001 OECD Decision does not require recovery facilities to use it.

While some recovery facilities may not be subject to the import and other requirements because they are not handling RCRA hazardous waste, these entities should be aware that the competent authorities of the exporting Member countries may still impose the conditions outlined in the OECD Council Decisions before the transactions can be completed. Thus, if the waste is considered non-hazardous in the United States, EPA would not require a certificate of recovery from a facility. However, the competent authority of the country of export may require a certificate of recovery, and may require that the exporter include such a requirement in the contract between the exporter and importer.

¹² Section 262.81(j) in the proposed revisions to the regulatory text in 40 CFR part 262, subpart H defines “OECD Decision” as “Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20” for the purposes of the subpart.

¹³ Under both the 1992 Decision and the Amended 2001 OECD Decision, transboundary movements of wastes subject to the Amber control procedures may only occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements between facilities controlled by the same legal entity, starting with the exporter and terminating at the recovery facility. The contracts must: (a) Clearly identify the generator of each type of waste, each person who shall have legal control of the wastes and the recovery facility; (b) provide that relevant requirements of the OECD Decisions are taken into account and binding on all parties; and (c) specify which party to the contract shall assume responsibility for ensuring alternative management of the wastes including, if necessary, the return of the wastes.

6. Amendments to Notification Requirements

The Amended 2001 OECD Decision introduced a series of notification requirements that require EPA to make conforming amendments to its OECD regulations. Specifically, this proposed rule would amend § 262.83(e) (which would be renumbered as § 262.83(d)) by incorporating several new items that must be included in the notification, including:

(a) Exporter and importing recovery facility e-mail address;

(b) E-mail address for importer (if different from the importing recovery facility);

(c) Address, telephone, fax, and e-mail of intended transporter(s);

(d) Means of transport envisioned; and

(e) Specification of the type of recovery operation(s) that will be used.

7. Amendments to Procedures for Exports to Pre-Approved Facilities

Under the Amended 2001 OECD Decision, a pre-approved recovery facility (also known as a pre-consented recovery facility) is one that has been identified in advance by the competent authority having jurisdiction over that facility as acceptable for receiving hazardous waste imports. For these facilities, the competent authority must inform the OECD secretariat that the facility is pre-approved, and the waste types that are acceptable for recovery. This allows for simplified and accelerated notification procedures. Pre-approval may be granted for a specific time frame and may be revoked at any time by the relevant competent authority.

The Amended 2001 OECD Decision established a consideration period for objection to transboundary movements to pre-approved facilities and lengthened the allowable coverage period for notifications. Specifically, the Decision established a consideration period of seven (7) working days during which time relevant competent authorities may object to transboundary movements of waste to pre-approved facilities. The Decision also established that the allowable coverage period for general notifications may extend up to three (3) years. Today's proposed rule amends the current regulations to incorporate these changes in § 262.83(b)(2)(ii) to reflect the seven (7) day consideration period and in § 262.83(b)(2)(i) to reflect the allowable coverage period for notifications.

8. New Procedures for the Pretreatment of Hazardous Wastes at R12/R13 Recovery Facilities

The Amended 2001 OECD Decision imposed new requirements for R12 and R13 recovery facilities, which we are proposing to incorporate in this proposal. R12 and R13 recovery facilities are transfer and storage facilities, respectively, that do not recover the wastes themselves. Because hazardous wastes destined for recovery may have to undergo treatment before a R1–R11¹⁴ recovery facility actually recovers them, the OECD considers R12 and R13 facilities as “intermediate or temporary operations.” The primary reason for the new requirements is to ensure that the subsequent R1–R11 recovery operation receives the waste and completes its recovery in an environmentally sound manner.

When the notification document lists an R12/R13 recovery facility, we are proposing that the exporter must indicate in the same notification document the recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

The R12/R13 recovery facility shall certify the receipt of the hazardous waste by sending a copy of the duly completed movement document within three (3) working days of the receipt of such wastes to the exporter and all competent authorities concerned. In addition, the R12/R13 recovery facility must retain the original movement document for three (3) years. Similarly, the R12/R13 recovery facility has to certify the completion of the R12/R13 recovery operation by submitting a certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation at that facility and no later than one (1) calendar year following the receipt of the waste by the R12/R13 recovery facility. The R12/R13 recovery facility must send the certificate of recovery to the exporter and to the competent authorities of the countries of export and import by either

mail, e-mail followed by mail, or by fax followed by mail.

The control procedures applied to transboundary movements of hazardous waste from an R12/R13 recovery facility to a subsequent R1–R11 recovery facility vary depending on whether these facilities are located within the same Member country or in a different Member country.

When the subsequent R1–R11 recovery facility is located within the same country, we are proposing that the R12/R13 recovery facility must obtain from the subsequent R1–R11 recovery facility a certification that the “final” recovery of the hazardous waste at that facility has been completed within one (1) calendar year following the delivery of the hazardous waste to the R1–R11 facility. The format of the certification of recovery is not fixed, but it must, at a minimum, identify the code number of the notification document and serial number of the movement documents to which it pertains. The R12/R13 recovery facility must then transmit the certification document prepared by the R1–R11 recovery facility to the competent authorities of the countries of import and export as soon as possible, but no later than one (1) calendar year following the delivery of the hazardous waste to the R1–R11 recovery facility.

When the subsequent R1–R11 facility is not located in the same Member country as the R12/R13 facility, we are proposing that a new notification must be made for the transboundary movement of hazardous waste by the R12/R13 recovery facility. The applicable procedures differ, however, depending upon the country where the final recovery operation occurs. In particular, if the final R1–R11 recovery facility is located in the initial country of export, then the normal Amber control procedures shall apply. In this case, the R12/R13 facility must submit a new notification document to its competent authority and obtain consent from its competent authority and from the initial country of export to the export of the hazardous waste back to that country for final recovery. If, however, the final R1–R11 recovery facility is located in a country different from the initial country of export, then the Amber control procedures shall also apply, but the movement will in effect be treated as a “re-export” of waste to a third country. In this case, not only is a new notification document required, but the competent authority of the initial country of export must also be notified of the transboundary movement, and consent must be obtained from the original country of export and the new countries of import,

¹⁴ Recovery operations R1 through R11 are defined as the following: R1, use as a fuel (other than in direct incineration) or other means to generate energy; R2, solvent reclamation/regeneration; R3, recycling/reclamation of organic substances which are not used as solvents; R4, recycling/reclamation of metals and metal compounds; R5, recycling/reclamation of other inorganic materials; R6, regeneration of acids or bases; R7, recovery of components used for pollution abatement; R8, recovery of components used from catalysts; R9, used oil re-refining or other reuses of previously used oil; R10, land treatment resulting in benefit to agriculture or ecological improvement; and, R11, uses of residual materials obtained from any of the operations numbered R1–R10.

export, and transit. For example, if a hazardous waste is exported from the United States to a R12/R13 facility in France, and then will be sent to a subsequent R1–R11 recovery facility in Germany, the R12/R13 facility in France must submit a notification to and obtain consent from France (the new country of export), the United States (the original country of export) and Germany (the new country of import for final recovery).

This proposed rule incorporates all of these requirements in § 262.82(f).

9. New Provisions Regarding Mixtures of Hazardous Wastes

The Amended 2001 OECD Decision contains controls and provisions related to the mixture of hazardous waste. Specifically, the Amended 2001 OECD Decision defines a mixture of hazardous waste as one that results from the intentional or unintentional mixing of two or more different hazardous wastes. However, under the Amended 2001 OECD Decision, a single shipment of hazardous wastes, consisting of two or more wastes, where each is separated, is not considered a mixture of hazardous waste.

The Amended 2001 OECD Decision also provides that:

- A mixture of two or more Green wastes should be subject to the Green control procedures. However, the regulated community should be aware that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

- A mixture consisting of a Green waste and more than a “de minimis” amount of Amber waste is subject to the Amber control procedures. In the absence of internationally accepted criteria, the term “de minimis” should be defined according to national regulations and procedures.

- A mixture containing two or more Amber wastes is subject to the Amber control procedures.

In this proposed rule, EPA has revised the text in § 262.82(a) to clarify that only those wastes and waste mixtures considered hazardous under U.S. national regulations will be subject to the Amber control procedures within the United States. This is consistent with longstanding EPA policy, and should minimize confusion for the regulated community. For example, under the existing RCRA hazardous waste regulations, any mixture of an Amber waste that exhibits one or more of the hazardous characteristics of ignitability, corrosivity, reactivity, or toxicity under RCRA with a Green waste shall be considered an Amber waste if

the mixture still exhibits one or more of the RCRA hazardous waste characteristics and, thus, be subject to the Amber control procedures. Conversely, if the resulting mixture no longer exhibits one or more of the RCRA hazardous characteristics, it will instead be considered a Green waste, and be subject to the Green control procedures.

Because other OECD Member countries may require that the mixtures listed above (that the U.S. sometimes considers subject to the Green control procedures) be subject to Amber control procedures, the proposed rule includes notes stating that other OECD Member countries may subject such mixtures to the Amber control procedures. In such cases, U.S. importers and exporters should be prepared to follow the Amber control procedures within those OECD Member countries.

Finally, the Amended 2001 OECD Decision requires that notification for a transboundary movement of a mixture of hazardous wastes falling under the Amber control procedures should be made by the person performing the mixing activity (the generator of the mixture) or any other person acting as an exporter in place of the person performing the mixing activity. In the notification, relevant information on each fraction of the waste, including its code numbers, has to be given in order of importance. This proposed rule would impose these requirements.

10. New Provisions Regarding the Return and Re-Export of Hazardous Wastes Subject to the Amber Control Procedures

This proposed rule proposes to adopt the Amended 2001 OECD Decision’s more precise provisions (than the earlier 1992 Decision) on measures to be taken in case a transboundary movement of hazardous waste that is subject to the Amber control procedures cannot be completed as intended (e.g., not in accordance with the notification, consents given by the competent authorities, or the terms of the contract). There may be a number of reasons for this non-completion, for example, an accident during the transport of the waste, improper notification, or any illegal action taken by someone involved with the movement of the hazardous waste.

The Amended 2001 OECD Decision provides that if this uncompleted movement of hazardous waste (hereafter referred to as the “incident”), takes place in the country of import, the competent authority of that country shall immediately inform the competent authority of the country of export. The competent authorities of the concerned

countries are to cooperate in resolving the incident by making all necessary arrangements to ensure the best alternative management of the hazardous waste. If alternative arrangements cannot be made to recover these wastes in an environmentally sound manner in the country of import, the hazardous waste must be returned to the country of export or re-exported to a third country.

(a) Return of Hazardous Waste to Country of Export

Under the Amended 2001 OECD Decision, the return of the hazardous waste to the country of export is to take place within ninety (90) days from the time when the country of export was informed of the incident, or such other period of time to which all concerned countries agree. The competent authorities of both countries of export and transit (if applicable) are to be informed about the return of the hazardous waste and the reasons for its return. These authorities are prohibited from opposing or preventing the return of the hazardous waste to the country of export, so long as the movement complies with the requirements set out by the country of export’s domestic law. If the waste is returned through a new country of transit, the competent authority of that country is to be notified and consent obtained in accordance with the normal Amber control procedures.

(b) Re-Export of Hazardous Waste From the Country of Import to a Third Country

Under the Amended 2001 OECD Decision, the re-export from the country of import to a third country is considered a new transboundary movement of hazardous waste. As a result, the Amber control procedures are applicable. The initial importer becomes the new exporter and, consequently, assumes all responsibilities as an exporter. In addition, the notification must also include the competent authority of the initial country of export who, in accordance with the Amber control procedures, may object to the re-export if the movement does not comply with the requirements set out by its domestic law.

(c) Return of Hazardous Waste From Country of Transit to Country of Export

If the incident takes place in the country of transit, the exporter should make arrangements so that the hazardous waste still can be recovered in an environmentally sound manner in the recovery facility of the importing country to where it was originally

destined. The competent authority of the country of transit is to immediately inform the competent authorities of the countries of export and import and any other countries of transit. If the exporter is unable to arrange for the recovery of the hazardous waste in an environmentally sound manner at the recovery facility to where it was originally destined, the hazardous waste should be returned, adhering to subsection (a) above, to the country of export within ninety (90) days from the time when the country of export was informed of the incident or such other period of time as the concerned countries agree. The competent authorities of the country of export and the countries of transit are to be informed of the return, but they are prohibited from opposing or preventing the return of the hazardous wastes to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law. This proposal sets forth these re-export and return provisions of the Amended 2001 OECD Decision in §§ 262.82(c), 262.82(d), and 262.82(e).

11. SLABs Are Now Covered by EPA's OECD Rule

This proposed rule updates § 262.80(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in one of the OECD countries listed in § 262.58(a)(1) are subject to 40 CFR part 262, subpart H.

12. Technical Corrections to EPA's OECD Rule

This proposed rule makes several technical corrections to EPA's current OECD rule, including corrections to capitalization, syntax, and punctuation errors. In these changes, EPA is not making any substantive revisions, but is seeking to eliminate any confusion on the part of the regulated community by striving for consistency both within the regulations and with the terms of the Amended 2001 OECD Decision. Some prevalent examples of these types of revisions include changing "Subpart" to "subpart," "OECD member" to "OECD Member," and "thirty days" to "thirty (30) days."

13. Change to the Submittal Address for Exception Reports

This proposed rule amends the exception reporting requirements in § 262.87(b) to specify that all exception reports are to be submitted to the Office of Enforcement and Compliance Assurance's Office of Federal Activities

in Washington, DC rather than the Administrator.

D. Changes to 40 CFR 264.12(a)(2) and 40 CFR 265.12(a)(2)

This proposed rule also amends §§ 264.12(a)(2) and 265.12(a)(2) by, among other things, requiring owners or operators of recovery facilities to submit a certificate of recovery as soon as possible after the recovery is completed, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste.

E. Changes to 40 CFR 264.71(a)(3) and 40 CFR 265.71(a)(3)

This proposed rule also amends §§ 264.71(a)(3) and 265.71(a)(3) by requiring owners or operators of facilities receiving imported hazardous wastes to submit to EPA the written documentation of EPA's consent to the import along with a copy of the RCRA hazardous waste manifest for the shipment that they are currently required to submit to EPA within thirty (30) days of shipment delivery. This will enable EPA to match the individual shipment manifest to the consent for an annual notice from a foreign exporter.

F. Changes to 40 CFR 266.80(a)

The existing regulations at 40 CFR part 266, subpart G, "Spent Lead-Acid Batteries Being Reclaimed," exempt exporters of SLABs destined for reclamation from the export requirements of 40 CFR part 262. EPA proposes to amend the table located at 40 CFR 266.80 by including two additional rows to the current table. These additional rows will effectively require that exporters and transporters of SLABs being sent to a foreign country for reclamation will need to meet the universal waste requirements concerning the export of SLABs for reclamation.

Specifically, exporters would need to either comply with the requirements in 40 CFR part 262, subpart H when the shipments are destined to one of the OECD Member countries listed in § 262.58(a)(1), or with the following requirements when the shipments are destined for any country not listed in § 262.58(a)(1):

- Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;
- Export such SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR part 262 of this chapter; and

- Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

The transporter of SLABs being sent to a foreign country for reclamation would need to comply with the applicable requirements in 40 CFR part 262, subpart H when the shipments are destined to one of the OECD Member countries listed in § 262.58(a)(1). For export shipments of SLABs not destined for one of the OECD Member countries listed in § 262.58(a)(1), the transporter would not be able to accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent, and would have to ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the shipment; and
- The shipment is delivered to the foreign facility designated by the person initiating the shipment.

EPA proposes to amend the table located at 40 CFR 266.80 in order to ensure greater protection of human health and the environment through notification, tracking, and management of SLABs. In addition to harmonizing the RCRA hazardous waste regulations for SLABs with the notification and consent requirements in the RCRA universal waste rules, today's proposed rule would harmonize the export requirements for SLABs with the Amended 2001 OECD Decision and the Basel Convention. (Note that the exemption from the manifest requirements for exporters and transporters of SLABs for reclamation will continue to remain in effect.)

The table located at 40 CFR 266.80 describes the various kinds of SLAB handlers and their respective legal requirements. Some SLAB handlers may find that more than one description located in the table applies to their SLAB management activities. It is the SLAB handler's responsibility to read all seven descriptions and carefully consider any and all requirements which may apply.

1. Export Shipments of SLABs to OECD Member Countries

We are proposing that exporters and transporters of SLABs destined for reclamation in one of the OECD Member countries listed in § 262.58(a)(1) would have to comply with all applicable sections of 40 CFR part 262, subpart H for wastes subject to the Amber control procedures. For a complete listing of the proposed requirements, exporters and transporters should consult the regulatory text for 40 CFR part 262, subpart H in this proposal. In addition

to the proposed changes to subpart H discussed in earlier sections, the applicable Amber control procedures include, but are not limited to, the following:

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation would be required to comply with the Amber control procedures in § 262.83. Under the Amber control procedures, an exporter must submit a complete notification of its intent to export to EPA at least 45 days before the export is scheduled to leave the United States (or at least ten days if the shipment is going to a pre-approved facility in the country of import). The notification can cover export activities spanning a period of up to and including 12 months (or up to three years if the shipment is going to a pre-approved facility in the country of import).

A complete notification includes, but is not limited to:

- Contact information and EPA ID number (if applicable) for the exporter;
- Point of departure from country of export;
- A waste description and quantity of the hazardous waste being exported;
- The RCRA waste code(s) (if applicable), United Nations number, and OECD waste code for the hazardous waste (SLABs are classified as Amber waste A1160 under the Amended 2001 OECD Decision);
- Planned mode(s) of transportation;
- Contact information for all intended transporters;
- Contact information and the OECD recovery operation code(s) (e.g., R1–R13) for both the importer and the final recovery facility (if different sites);
- The requested period of exportation;
- A list of all transit countries, along with points of entry and departure, through which the hazardous waste will be sent, and
- A certification by the exporter that a contract or chain of contracts or equivalent arrangements among all parties to the proposed shipment are in place and are legally enforceable in all concerned countries.

If the notification is complete, EPA will forward it to the importing country and any transit country(ies). Within three working days of receiving the notification, the importing country must send either an Acknowledgement of Receipt or a list of items that the notification lacks directly to U.S. EPA, to the exporter, and to any countries of transit. The countries of import and transit have thirty (30) days from the date on the Acknowledgement of

Receipt (seven days for shipments going to pre-approved facilities) to object or consent explicitly to the proposed shipment. Any explicit objection or consent by the country of import or transit will be sent simultaneously to U.S. EPA, the exporter, and any other interested country (e.g., of import or transit). If no objections are submitted within the thirty day (30) period (seven days for shipments going to pre-approved facilities), under the provisions of the Amended 2001 OECD Decision, tacit (or implied) consent is assumed and the movement of the hazardous wastes may commence.

(b) Shipment Tracking

Under § 262.84, export shipments of SLABs must be accompanied by a movement document from the initiation of the shipment until it reaches the final recovery facility. Exporters must provide the initial transporter with the movement document. Transporters are prohibited from accepting a shipment of SLABs without such a movement document, and are required to ensure that the movement document accompanies the shipment from the initiation of the shipment until it reaches the final recovery facility. The movement document must include all the information from the notification and the following:

- Date movement commenced;
- Name (if not the exporter), address, telephone and fax numbers, and e-mail of person originating the movement document (Note that this person is equivalent to the primary exporter under 40 CFR part 262, subpart E);
- Company name and EPA ID number (if applicable) of all transporters;
- Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;
- Any special precautions to be taken by transporter(s) during transportation;
- Certification/declaration signed by the exporter that no objection to the shipment has been lodged; and
- Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Annual Reporting

Under § 262.87(a), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement documentation under § 262.84 will have to submit to the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, an annual report summarizing the types, quantities, frequency, and ultimate

destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Exception Reporting

Under § 262.87(b), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement documentation under § 262.84 must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

- He has not received a copy of the RCRA hazardous waste manifest signed by the transporter and noting the date and point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;
- Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;
- The waste is returned to the United States.

(e) Recordkeeping

Under § 262.87(c), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement documentation under § 262.84 must keep the following records:

- A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned (e.g., export, transit, and import) for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;
- A copy of each annual report for a period of at least three (3) years from the due date of the report;
- A copy of any exception reports and a copy of each confirmation of delivery (i.e., movement documentation) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and
- A copy of each confirmation of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed the processing of the SLAB shipment.

2. Export Shipments of SLABs to Countries Not Listed in § 262.58(a)(1)

(a) Notification of Intent To Export

We are proposing that exporters of SLABs destined for reclamation in countries not listed in § 262.58(a)(1) would be required to comply with the primary exporter notification requirements in § 262.53, and export the SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent, as defined in 40 CFR part 262, subpart E. Specifically, the exporter would have to submit a complete notification of its intent to export to EPA at least 60 days before the export is scheduled to leave the United States. The notification can cover export activities spanning a period of up to and including 12 months. This complete notification contains:

- Contact information and EPA ID number (if applicable) for the primary exporter;
- A description and quantity of the SLABs to be exported;
- The RCRA waste code(s) (if applicable), U.S. DOT proper shipping name, hazard class, and United Nations number as identified in 49 CFR parts 171 through 177;
- Planned mode(s) of transportation and type(s) of containers;
- A description of the manner in which the SLABs will be treated, stored, or disposed of (including recovery) in the receiving country;
- The planned frequency and time period of exportation;
- A list of all transit countries through which the SLABs will be sent, and a description of the approximate length of time the hazardous waste will remain in each country and the nature of its handling while there;
- All points of entry to and departure from each foreign country through which the SLABs will pass; and
- The name and site address of the consignee¹⁵ and any alternate consignee.

If after proper notification, the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter. If, on the other hand, the receiving country objects to the receipt of the hazardous waste or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

¹⁵ As noted previously, this is equivalent to "importer" in the proposed revisions to 40 CFR part 262, subpart H.

(b) Shipment Documentation and Tracking

We are proposing that exporters of SLABs must provide a copy of the EPA Acknowledgment of Consent for the SLAB shipment to the transporter transporting the shipment for export. Transporters are prohibited from accepting a SLAB export shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the SLAB export shipment; and
 - The SLAB export shipment is delivered to the facility designated by the person initiating the shipment.
- Unlike SLAB export shipments that must comply with 40 CFR part 262, subpart H, SLAB export shipments destined for countries not listed in § 252.58(a)(1) do not have any shipment tracking documentation requirements or exception reporting requirements because SLAB shipments are exempt from the RCRA hazardous waste manifest requirements.

(c) Annual Reporting

We are proposing that exporters of SLABs must follow the requirements applicable to a primary exporter detailed in § 262.56 "Annual reports" (a)(1) through (4), (6), and (b). Specifically, exporters will have to file with the EPA Administrator an annual report summarizing the types, quantities, frequency, and ultimate destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Recordkeeping

Under § 262.57, we are proposing that exporters of SLABs must keep the following records:

- A copy of each notification of intent to export for at least three years from the date the SLAB export shipment was accepted by the initial transporter;
- A copy of each EPA Acknowledgment of Consent for at least three years from the date the SLAB export shipment was accepted by the initial transporter;
- A copy of each confirmation of delivery of the SLAB shipment from the consignee for at least three years from the date the SLAB export shipment was accepted by the initial transporter; and
- A copy of each annual report for at least three years from the due date of the report.

G. Changes to 40 CFR 271.1

This proposed rule amends Table 1 and Table 2 of § 271.1 by adding references to the revisions which amend 40 CFR part 262, subpart E to reflect that subpart E implements the Hazardous and Solid Waste Amendments of 1984.

IV. Costs and Benefits of the Proposed Rule

A. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of this proposed action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This analysis assesses the proposed integration of various OECD Council Decisions into existing U.S. regulations governing shipments (export/import/transit) of hazardous wastes destined for recovery between the U.S. and other OECD Member countries. In addition, we assess the newly proposed export regulations for SLABs to OECD and non-OECD countries. Also incorporated into the analysis is the proposed requirements that importers of hazardous waste subject to 40 CFR part 262, subpart F, provide to the initial transporter documentation necessary to confirm EPA's consent to the import to accompany such manifested import shipments, and that the receiving facility submit to EPA a copy of that documentation when it submits to EPA the RCRA hazardous waste manifest for the import shipment. Finally, this action proposes a revision to the current language in §§ 262.55 and 262.87(b) that will require exception reports to be submitted directly to the Director, International Compliance and Assurance Division (ICAD), of the Office of Enforcement and Compliance Assurance (OECA), EPA Headquarters, rather than to the EPA Administrator. There is no discernable cost impact associated with this proposed requirement for exception reports to be submitted directly to the Director.

First, we assess all potential cost impacts (positive and negative) of the

proposed revisions to the OECD rule, including:

- Exemptions for wastes destined for laboratory analyses,
- The requirement to provide a certificate of recovery,
- Information collection requirements associated with exchange and accumulation recovery operations, and
- The notification requirements related to the return of wastes.

Next, we assess all potential cost impacts (positive and negative) of the proposed revisions to the SLAB regulations, including:

- Notification requirements for SLAB exporters,
- The renotification requirements associated with any changes to the original SLAB export notification,
- The annual reporting requirements,
- Additional reporting requirements (if requested by EPA), and
- SLAB exporter recordkeeping requirements.

Finally, we analyze the proposed requirements that importers of hazardous waste subject to 40 CFR part 262, subpart F, provide to the initial transporter documentation necessary to confirm EPA's consent to the import to accompany such manifested import shipments, and that the receiving facility submit to EPA a copy of that documentation when it submits to EPA the RCRA hazardous waste manifest for the import shipment.

We also include an estimate for potentially affected entities to read the regulation, which is, by default, a necessary requirement for understanding the regulation. Cost impacts associated with reading the regulation are assessed for exporters, importers, and transporters.

C. Cost Impacts

The total incremental cost for the OECD portion of the proposed rule during the first year of implementation (i.e., including reading the rule) is estimated to be \$14,472. This is a net impact estimate that includes a total net incremental cost increase to the regulated community of \$13,634, and a total net cost increase to EPA of \$838. The total incremental annual net cost for the OECD portion after the first year of implementation (i.e., excluding reading the rules) is estimated to be \$9,678.

The total incremental cost for the SLAB portion of the proposed rule during the first year of implementation (i.e., including reading the rule) is estimated at \$851,000. The first year total incremental cost is expected to be about \$780,000 for the affected U.S. industry and about \$71,000 for EPA.

The total incremental annual cost after the first year of implementation (i.e., excluding reading the rules) is estimated to be \$404,000.

The combined total cost of the proposed rule (OECD portion, plus SLAB portion, plus import consent documentation portion) is estimated at \$919,000 for the first year. Approximately 92.5% of this total is attributable to the SLAB portion of the proposal, followed by the EPA import consent documentation requirements representing about 5.9% of the total. The OECD portion accounts for about 1.6% of the total first year cost of the proposal. After the first year, the total incremental cost of the proposed rulemaking, omitting the cost of reading the rules, is estimated at \$468,000.

Cost estimates presented in this section are based on our estimates for the number of potentially affected importers, exporters, and transporters. Numerous data sources were used in the derivation of these estimates, including: RCRAInfo, the Waste International Tracking System (WITS), industry consultations, the Biennial Report, the International Trade Commission (ITC), Environment Canada, and SEMARNAT¹⁶ data. A full explanation of the data sources, analytical methodology, assumptions, and limitations associated with the findings presented above is presented in our Cost Assessment¹⁷ document prepared in support of this proposed action. This document is available in the docket. Interested stakeholders are encouraged to read and comment on the analysis and findings presented in this document.

D. Benefits

We have prepared a qualitative assessment of the benefits anticipated from this action. Overall, this action is expected to result in improved regulatory efficiency of the affected materials, while ensuring improved data collection and enhanced enforcement capabilities. Specific benefits include the following:

- The U.S. would meet its legal obligations to implement the Amended 2001 OECD Decision.
- Increased regulatory efficiency by implementing provisions in the Amended 2001 OECD Decision that were meant to clarify the scope of control and make the control procedures more precise.

¹⁶ Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT).

¹⁷ *Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S.*

- Helping to improve market efficiency by allowing exporters to ship wastes more quickly and store for shorter periods of time.

- Encouraging the environmentally sound recovery of hazardous wastes, thereby reducing the risks associated with treatment and disposal.

- Providing for the improved ability to acquire information regarding the quantities of SLABs exported from the U.S. and the destination facilities to which the SLABs are exported.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA

enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA cannot authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States do not receive authorization to administer the Federal government's functions in subparts E or F, in accordance with 271.10, the State program must include requirements respecting international shipments equivalent to those at subparts E and F. States are also not authorized to administer the Federal government's functions in subpart H, but in this case, States are not required to adopt those provisions. However, EPA would encourage States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E, F and H, the import manifest submittal requirements in 264.71(a)(3) and 265.71(a)(3), or the domestic management provisions for SLABs in 40 CFR part 266, subpart G. If or when a State chooses to adopt these import/export provisions, when final, care should be taken not to replace Federal or international references with State terms. Moreover, if finalized, the provisions of today's notice would take effect in all States upon the effective date of the final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Accordingly,

EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866. Any changes made in response to OMB's recommendations have been documented in the docket for this action.

This rule, as proposed, is projected to result in a net increase in costs to certain importers, exporters, and transporters of affected hazardous wastes. Increased costs are also projected for the federal government. The total net cost of this proposal is estimated to be \$919,000 during the first year following rule implementation. Exporters are projected to account for approximately 68 percent of this total. Benefits of this action include the U.S. meeting its legal obligations to implement the Amended 2001 OECD Decision, increased regulatory efficiency, reduced risks associated with the treatment and disposal of hazardous wastes, and improved data collection.

The total net cost estimate for this proposal is significantly below the \$100 million threshold¹⁸ established under part 3(f)(1) of the Order. Thus, this proposal is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment¹⁹ in support of this proposed rule. The RCRA docket established for today's rulemaking maintains a copy of this document for public review. Interested persons are encouraged to read and comment on this document.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2308.01.

The proposal requires that the affected sources submit the following:

- Under the proposed OECD revisions: U.S. recovery facilities will have to submit a certificate of recovery to the foreign exporter, and to the competent authority of the country of export and EPA, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following

receipt of waste; U.S. facilities that exchange or accumulate the waste shipments (e.g., R12/R13 facilities) before final recovery at another facility (e.g., R1–R11 facilities) will have to prepare and provide a certificate of recovery for R12/R13 recovery operations, and provide and maintain a copy of the certificate of recovery for the subsequent R1–R11 recovery operations; U.S. recovery facilities that cannot complete the intended recovery and must re-export or otherwise return the hazardous waste shipment will have to submit new notification documents and comply with the associated Amber control procedures; and U.S. exporters will have to keep records of the additional certifications of recovery and any R12/R13 certifications they receive from recovery facilities in other OECD countries.

- Under the proposed SLAB revisions: SLAB exporters will have to: Comply with the full subpart H requirements if going to countries listed in § 262.58(a)(1) (e.g., submitting notices, originating a movement document for each shipment, keeping records of all confirmations of receipt and recovery they receive, submitting exception reports and annual reports, and recordkeeping); and comply with portions of the subpart E requirements if going elsewhere (e.g., submitting notices, providing a copy of EPA's Acknowledgement of Consent for each shipment, submitting annual reports and recordkeeping).

- Under the proposed import documentation revisions: U.S. receiving facilities will have to submit to EPA copies of documentation confirming EPA's consent to the import each time they submit to EPA a copy of the RCRA hazardous waste manifest for each hazardous waste import shipment within thirty (30) days of shipment delivery.

All affected sources will have to retain records of this paperwork for a period of three years, which is consistent with the RCRA hazardous waste requirements of §§ 262.53, 262.56, 262.57, 262.83, 262.87, 264.71 and 265.71. The collection of the requested information is mandatory, as it is needed by EPA as a part of its overall compliance and enforcement program for the protection of human health and the environment.

The estimated annual public reporting burden for the new paperwork requirements in the proposed rule is approximately 4.62 hours/year per respondent under the proposed OECD revisions; 20.73 hours/year per respondent under the proposed SLAB revisions; and 9.15 hours/year per

¹⁸ This \$100 million threshold applies to both costs, and cost savings.

¹⁹ *Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S. (Cost Assessment).*

respondent under the proposed import consent documentation. The annual public recordkeeping burden is estimated to average 10.20 hours/year per respondent under the proposed OECD revisions, and 0.25 hours/year per respondent under the proposed SLAB revisions. The total annual public burden is estimated to be 15,077 hours and \$840,500 during the first year of implementation, and 9,024 hours and \$389,600 after the first year. The capital and start-up plus total operation and maintenance costs are expected to be negligible. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-RCRA-2005-0018. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 6, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13

CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities. The primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities," (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have determined that a substantial number of potentially affected small businesses (importers, exporters, and transporters) will not experience significant negative economic impacts. For the purpose of our impact analyses, small business is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration. No small governmental jurisdiction or small not-for-profit organizations are expected to be affected by this action, as proposed.

While a significant number of exporters may be small businesses, the results of our analysis indicate that the cost to individual small entities in each potentially affected sector (as identified by NAICS codes) is likely to be insignificant. Our analysis specifically examined the potentially impacted small companies with fewer than 20 employees. The average annual gross sales of these companies were found to range from \$0.4 million to \$4.1 million, depending upon NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, was found to range from 0.01 percent to 0.08 percent.

The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this

determination. This analysis is incorporated into the *Cost Assessment*, which is available in the docket established for this proposal. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments, or the private sector, in large part because the UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations (e.g., the

Amended 2001 OECD Decision). In any event, EPA has determined that this rule, as proposed, does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total cost impacts of this proposed action are estimated to be \$919,000 during the first year, and approximately \$468,000 per year thereafter.

Finally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not affected by this action, as proposed.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not have Federalism implications because the State and local governments do not administer the export and import requirements under RCRA. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this proposal. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on our determination under this Order and on this proposed rule from tribal officials.

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

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States.

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

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This rule, as proposed, will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. In fact, this proposed rule is designed to improve regulatory efficiency and improve information collection, in part by implementing technical corrections and clarifications to the existing regulations.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This proposal is designed to improve regulatory efficiency and improve information collection, in part by implementing technical corrections and clarifications to the existing regulations.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, International organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Spent Lead-Acid Batteries, Recycling, Waste treatment and disposal.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: September 19, 2008.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. 262.55 is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

* * * * *

3. Section 262.58 is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports hazardous waste subject to the Federal manifest requirements of part 262, or subject to the universal waste management standards of 40 CFR part 273, or subject to State requirements analogous to 40 CFR part 273, or exports spent lead-acid batteries subject to the spent lead-acid battery management

standards of 40 CFR part 266, subpart G or subject to State requirements analogous to 40 CFR part 266, subpart G, to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports.

(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of subpart H of this part, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part, and is not subject to the requirements of subpart H of this part.

4. Section 262.60(e) is revised to read as follows:

* * * * *

(e) The importer must provide the transporter with an additional copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to be submitted by the receiving facility to U.S. EPA in accordance with § 264.71(a)(3) and § 265.71(a)(3) of this chapter.

5. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

Sec.

- 262.80 Applicability.
- 262.81 Definitions.
- 262.82 General conditions.
- 262.83 Notification and consent.
- 262.84 Movement document.
- 262.85 Contracts.
- 262.86 Provisions relating to recognized traders.
- 262.87 Reporting and recordkeeping.
- 262.88 Pre-approval for U.S. recovery facilities [Reserved].
- 262.89 OECD waste lists.

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the Federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the Federal manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273 or to State requirements analogous to 40 CFR part 273, or for exports only, if the waste is subject to 40 CFR part 266, subpart G or to State requirements analogous to 40 CFR part 266, subpart G.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

(a) *Competent authority* means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

(b) *Countries concerned* means the OECD Member countries of export or import and any OECD Member countries of transit.

(c) *Country of export* means any designated OECD Member country listed in § 262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

(d) *Country of import* means any designated OECD Member country listed in § 262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

(e) *Country of transit* means any designated OECD Member country listed in § 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary

movement of hazardous wastes is planned or takes place.

(f) *Exporter* means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.

(g) *Importer* means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

(h) *OECD area* means all land or marine areas under the national jurisdiction of any OECD Member country listed in § 262.58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

(i) *OECD* means the Organization for Economic Cooperation and Development.

(j) *OECD Decision* means the OECD "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20."

(k) *Recognized trader* means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

(l) *Recovery facility* means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

(m) *Recovery operations* means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases

R7 Recovery of components used for pollution abatement

R8 Recovery of components used from catalysts

R9 Used oil re-refining or other reuses of previously used oil

R10 Land treatment resulting in benefit to agriculture or ecological improvement

R11 Uses of residual materials obtained from any of the operations numbered R1–R10

R12 Exchange of wastes for submission to any of the operations numbered R1–R11

R13 Accumulation of material intended for any operation numbered R1–R12

(n) *Transboundary movement* means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

§ 262.82 General conditions.

(a) *Scope*. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in § 262.80(a). The two lists correspond to Appendices 3 and 4, respectively, of the OECD Decision and have been incorporated by reference in § 262.89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in § 262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the

Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to paragraph (a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to paragraph (a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to paragraph (a)(3)(ii): The regulated community should note that some OECD

Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Green control procedures.

(b) *General conditions applicable to transboundary movements of hazardous waste:* (1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Provisions relating to re-export for recovery to a third country:* (1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in § 262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and new transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) *Duty to return or re-export wastes subject to the Amber control procedures.* When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any new transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the new country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other

period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(e) *Duty to return wastes subject to the Amber control procedures from a country of transit.* When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(f) *Requirements for wastes destined for and received by R12 and R13 facilities.* The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall

retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:

(i) in the initial country of export, Amber control procedures apply, including a new notification;

(ii) in a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) *Laboratory analysis exemption.* The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

§ 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.

(b) *Amber wastes.* Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) *Notification.* At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words “Attention: OECD Export Notification” prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) *Tacit consent.* If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and

renewal of all consents is required for exports after that date.

(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country’s consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words “OECD Export Notification—Pre-approved Facility” prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any concerned country objects to the shipment.

(c) *Wastes not covered in Appendices 3 and 4 of the OECD Decision.* Wastes destined for recovery operations, that have not been assigned to Appendices 3 or 4 of the OECD Decision, but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the

notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to Appendices 3 or 4 of the OECD Decision, and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:*

(1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number (if applicable), address, telephone and fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone and fax numbers, e-mail address, and technologies employed;

(4) Importer name (if not the owner or operator of the recovery facility), address, telephone and fax numbers, and e-mail address; whether the importer will engage in waste exchange or storage, meeting the definition of R12 or R13 recovery operations in § 262.81(m), prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate list (Part I or II of Appendix 3 or 4) of the OECD Decision, description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) according to § 262.81(m).

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my

knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name: _____

Signature: _____

Date: _____

Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

§ 262.84 Movement document.

(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures at § 262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in § 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required under § 262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:

(1) Date movement commenced;

(2) Name (if not exporter), address, telephone and fax numbers, and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; OR

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR

3. The shipment is directed to a recovery facility pre-authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

(Delete sentences that are not applicable)

Name: _____

Signature: _____

Date: _____

(7) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and importers must comply with the import requirements of 40 CFR part 262, subpart F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of

Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility under § 262.81(m), the facility shall retain the original of the movement document for three (3) years.

§ 262.85 Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary,

arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in § 262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility

and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this subpart, persons (e.g., exporters, recognized traders) who meet the definition of primary exporter in § 262.51 or who initiate the movement documentation under § 262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement documentation under § 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list (Appendices 3 or 4 of the OECD Decision), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters

of greater than 100kg but less than 1000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement documentation under § 262.84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 or who initiates the movement documentation under § 262.84 must file an exception report in lieu of the requirements of § 262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 or who initiate the movement documentation under § 262.84 shall keep the following records paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, movement documentation) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each confirmation of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.88 Pre-approval for U.S. recovery facilities [Reserved]

§ 262.89 OECD waste lists.

(a) General. For the purposes of this subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this subpart, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273, to State requirements analogous to 40 CFR part 273, to the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or to State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.

(d) The OECD waste lists, entitled "List of Wastes Subject to the Green Control Procedure" and "List of Wastes Subject to the Amber Control Procedure," are set forth in Appendix 3

and Appendix 4, respectively, of the OECD Decision. These lists are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on [date of approval for incorporation by reference]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

7. Section 264.12(a)(2) is revised to read as follows:

§ 264.12 Required notices.

(a)(1) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later

than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

8. Section 264.71(a)(3) is revised to read as follows:

§ 264.71 Use of manifest system.

(a)(1) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

10. Section 265.12(a)(2) is revised to read as follows:

§ 265.12 Required notices.

(a)(1) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three

(3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature

followed by mail, or fax followed by mail.

* * * * *

11. Section 265.71(a)(3) is revised to read as follows:

§ 265.71 Use of manifest system.

(a)(1) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

12. The authority citation for part 266 is revised to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

13. In § 266.80(a) the table is revised to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries * * *	And if you * * *	Then you * * *	And you * * *
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).	.....	Are exempt from 40 CFR parts 262 (except for §262.11), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261 and §262.11 of this chapter.
(2) Will be reclaimed other than through regeneration.	Generate, collect, and/or transport these batteries.	Are exempt from 40 CFR parts 262 (except for §262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261 and §262.11, and applicable provisions under part 268.
(3) Will be reclaimed other than through regeneration.	Store these batteries but you aren't the reclaimer.	Are exempt from 40 CFR parts 262 (except for §262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261, §262.11, and applicable provisions under part 268.
(4) Will be reclaimed other than through regeneration.	Store these batteries before you reclaim them.	Must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	Are subject to 40 CFR parts 261, §262.11, and applicable provisions under part 268.
(5) Will be reclaimed other than through regeneration.	Don't store these batteries before you reclaim them.	Are exempt from 40 CFR parts 262 (except for §262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261, §262.11, and applicable provisions under part 268.

If your batteries * * *	And if you * * *	Then you * * *	And you * * *
(6) Will be reclaimed through re-generation or any other means.	Export these batteries for reclamation in a foreign country.	Are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) 40 CFR part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4), (6), and (b) "Annual Reports," and 262.57 "Record-keeping".	Are subject to 40 CFR part 261 and §262.11, and either must comply with 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.
(7) Will be reclaimed through re-generation or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	Are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Must comply with applicable requirements in 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must comply with the following: (a) You may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) You must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and (c) You must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

15. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Insert date of publication of final rule in the Federal Register (FR)].	Exports of hazardous waste	[Insert FR page numbers]	[Insert date of X months from date of publication of final rule].

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * * [Insert date X days after of publication of final rule in the Federal Register (FR)].	* * * * * Exports of hazardous waste	* 3017(a)	* * * * * [Insert Federal Register reference for publication of final rule].

* * * * *

[FR Doc. E8-22536 Filed 10-3-08; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

**Monday,
October 6, 2008**

Part VI

**Board of Directors
of the HOPE for
Homeowners
Program**

24 CFR Part 4001

**HOPE for Homeowners Program:
Program Regulations; Final Rule**

BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

24 CFR Part 4001

[Docket No. B-2009-F-01]

RIN 2580-AA00

HOPE for Homeowners Program: Program Regulations

AGENCY: Board of Directors of the HOPE for Homeowners Program.

ACTION: Final rule.

SUMMARY: This final rule sets forth the core requirements for the HOPE for Homeowners Program that have been established by the Board of Directors (Board) of the HOPE for Homeowners Program (Program). A new section 257 of the National Housing Act (NHA) provides the authority for this Program and oversight requirements to be performed by the Board. Specifically, section 257(c)(1) of the NHA requires the Board to prescribe such regulations as may be necessary or appropriate to implement the Program. The Board has determined that the regulations set forth in this rule are necessary and appropriate for the implementation and effective administration of the Program.

DATES: *Effective Date:* October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Emmanuel Yeow, Secretary of the Board of Directors of the HOPE for Homeowners Program, Department of Housing and Urban Development, 451 7th Street, SW., Room 9110, Washington, DC 20410-8000, telephone 202-708-3600 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The HOPE for Homeowners Act of 2008, located in Title IV of division A of the Housing and Economic Recovery Act of 2008 (HERA), (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008), amended Title II of the NHA to add a new section 257. New section 257 (12 U.S.C. 1701z-22) establishes within the Federal Housing Administration (FHA), the Program, a temporary FHA program, that offers homeowners and existing mortgage loan holders (or servicers acting on their behalf) insurance on the refinancing of loans for distressed mortgagors to support long term sustainable homeownership, including among other things, allowing homeowners to avoid foreclosure. Section 257 of the NHA authorizes the

Department of Housing and Urban Development (HUD) acting through the FHA to insure such refinanced eligible mortgages commencing no earlier than October 1, 2008, and such authority expires September 30, 2011.

Under the Program, new mortgages are offered by FHA-approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure. The new FHA-insured mortgage refinances the borrower's existing mortgage at a significant write-down. Eligible borrowers must be unable to afford their existing mortgage payments, must occupy the residence that is the security for the refinanced mortgage as their primary residence, and may not have any present ownership interest in another residence. Investors and investor properties are not eligible for the FHA-insured refinanced mortgages. Under the Program, participating mortgagors share their new equity and future appreciation with FHA. Additionally, participation in this Program is voluntary. No mortgagees, servicers, or investors are compelled to participate.

Section 257 of the NHA prohibits the new mortgage loan insured by FHA from exceeding 90 percent of the appraised value of the property that is security for the mortgage, or 132 percent of the dollar amount limitation in effect for 2007 under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a property of applicable size. In addition, section 257 also provides that the term of the FHA-insured refinanced mortgage shall have a maturity of not less than 30 years, and must bear a single rate of interest that is fixed for the entire term of the mortgage. Section 257 directs that a mortgagor participating in the Program may not grant a new subordinate lien on the mortgaged property during the first 5 years of the term of the mortgage insured under the Program, except as the Board may determine is necessary to ensure the maintenance of property standards, and subject to the requirements that any new outstanding liens (1) do not reduce the value of FHA's equity in the mortgagor's home; and (2) when combined with the mortgagor's existing mortgage indebtedness, do not exceed 95 percent of the home's appraised value at the time of the new subordinate lien.

The fundamental principle behind the HOPE for Homeowners Act and this Program is that providing new equity for distressed homeowners may be an effective way to help homeowners avoid foreclosures.

This Final Rule

Section 257(c)(1) of the NHA requires the Board to establish requirements and standards for the Program, and prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.¹ In addition to this broad direction to establish requirements and standards for the Program, section 257 also outlines specific areas for which the Board is charged with establishing standards and policies for the Program.

This final rule provides the core requirements that the Board has determined are necessary and appropriate for the implementation and effective administration of the Program. Consistent with section 257 of the NHA, however, the Board may establish standards and policies through means other than codified regulations. More detailed provisions implementing these core requirements may be issued by the Board or FHA through orders, a **Federal Register** notice, or through FHA mortgagee letters (or similar administrative issuances). Because this is a temporary program designed to address the immediate needs of homeowners faced with the looming threat of foreclosure, the regulations adopted by the Board are limited to the basic requirements of the Program. The Board's objective is to adopt regulations that address the core features of the Program, include necessary safety measures to avoid fraud, waste, and abuse, and leave FHA with sufficient flexibility to issue such guidance or processing requirements to make this a Program that is able effectively to assist distressed homeowners avoid foreclosure.

The regulations in this part present the purpose, the authority delegated to FHA, and reference to FHA requirements that are applicable to the Program.² The regulations define the

¹ The Board is composed of the Secretary of HUD, the Secretary of Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or their respective designees. Section 257(t) of the NHA also provides that the Board may "prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board." Consistent with this provision, the Board adopted bylaws regarding its organization, staffing, and operational procedures. These bylaws were published in the **Federal Register** on September 4, 2008 (73 FR 51621) and provide that the Board's principal place of business is 451 7th Street, SW., Washington, DC 20410-0500.

² Section 4(b) of the Department of Housing and Urban Development Act, 42 U.S.C. 3533(b), provides that the Federal Housing Commissioner shall head a Federal Housing Administration within HUD and shall have such duties and powers as may

key Program terms, and address the following Program areas: underwriting standards, representations of the mortgagee whose mortgagor will participate in the Program, mortgagor representations, certain prohibitions imposed on FHA, FHA equity sharing with the borrower, FHA appreciation sharing with the borrower, the prohibition on subordinate liens during the first five years of the mortgagor's Program mortgage, and applicable hearing procedures. The Board has determined that regulations addressing these areas are necessary for immediate implementation and long-term administration of the Program.

The payment to FHA of the equity created in the property as a result of the refinancing of the eligible mortgage is designed to avoid any windfall to mortgagors that would arise as the result of the refinancing. The same windfall avoidance concept also applies to the requirement that property appreciation be shared between the homeowner and FHA, the latter which is authorized to share any appreciation funds with subordinate mortgage holders.

Section 257(e)(4)(B) requires that, at a minimum, the Board take into consideration three factors in determining the amount of appreciation a subordinate mortgage lien holder may receive. The first factor is the status or relative priority of the subordinate liens. This factor is addressed in the payout allocation set forth in the rule. After sale or disposition of the property, HUD's 50 percent appreciation interest is paid to prior mortgage lien holders in order of the seniority in which their mortgage liens were held, to the extent of HUD's share. Mortgage lien holders that were in 2nd position behind the 1st mortgage will be paid first, then 3rd mortgage lien holders, and when the claims of all prior lien holders have been satisfied, HUD will retain the balance, if any.

The second factor is the outstanding principal and accrued but unpaid interest of the existing senior mortgage and subordinate mortgages. Since the total balances may not accurately reflect the amount the mortgagee potentially could recover in a foreclosure, the Board determined that these balances should be compared to the appraised value of the property. Therefore, this factor is expressed in the matrix described below as a cumulative combined loan-to-value (CLTV).

The third factor is the extent to which the principal and accrued interest owed on the mortgages that are senior to the particular subordinate mortgage exceed the property's current appraised value. This factor is taken into account as well in the matrix for appreciation sharing because the amount a subordinate mortgage holder may receive is based in part on the amount of principal and interest, calculated at the pre-default contract rate, owed on those mortgages that are more senior than the subordinate mortgage in question.

The Board gave very careful consideration to these three factors by examining several models developed to implement this authority. The initial models were very intricate and concern was raised that adopting any of them would cause confusion in the mortgage marketplace, and discourage subordinate mortgage holders and servicers from participating in the program. The Board also considered the potential for the existing senior mortgage holder, who will receive proceeds from the refinancing that are likely to exceed the holder's potential recovery in a foreclosure, to compensate a subordinate mortgage holder to participate in the Program. The Board encourages lenders to pursue such arrangements.

The following matrix provides the mechanism for determining the future appreciation payment a subordinate lien holder is eligible to receive. The Board considers a number of benefits to be present with this approach. It provides an incentive to action by subordinate lien holders; reduces administrative costs; is simple to calculate and easy to understand; and voids competing appraisals.

APPRECIATION SHARING PAYOUT MATRIX

Subordinate lien holder	Percent of unpaid principal and interest that lien holder is eligible to receive*
Cumulative CLTV >135%	9%
Cumulative CLTV ≤135%	12%

* Appreciation payment to a subordinate lien holder will depend on actual appreciation at the time of sale of the property and will be limited by the amount of future appreciation HUD receives. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the Program mortgage is originated, and will be based upon principal and interest on the date of origination of the Program mortgage, calculated at the pre-default contract rate of interest.

In establishing the maximum payments allowable to a subordinate mortgage holder, the Board took into account information received from market participants concerning the price received in the market currently for delinquent subordinate mortgages. The Board expects that the majority of subordinate mortgages offered to the Program will be delinquent. The information provided by market participants indicates that delinquent subordinate mortgages currently trade at substantially below their par values, with market values within the ranges established by the Board. Moreover, the information provided suggests that subordinate mortgages that are even 30 days delinquent are very likely to default and yield no recovery value to the holder of the subordinate mortgage. Indeed, it is common practice for holders to write-down the value of delinquent subordinate mortgages in portfolios and in securitized pools to zero once the loans are 180 days past due.

In establishing the maximum amounts that a subordinate mortgage holder may receive through receipt of an interest in the future appreciation of the property, the Board also took into consideration that subordinate mortgage holders receiving compensation in the form of future appreciation rights, may require additional compensation to participate in the Program to reflect the time value of money and uncertainty about the extent and timing of property appreciation. A certificate entitling the holder to receive a portion of future appreciation on a property may be worth little or nothing if the property experiences little or no appreciation. Moreover, appreciation rights are exercised upon sale or other disposition of the property, the timing of which is determined by the homeowner, rather than the claim holder. As a result, if homeowners that have a mortgage insured under the Program sell quickly, appreciation rights will have less value. Since homeowners participating in the Program have an incentive to sell the property to escape the shared appreciation requirement, claim holders may discount the value of shared appreciation rights. Accounting for these factors is inherently imprecise; nonetheless, using models based in part on option-pricing concepts, the Board believes that providing the holder of a subordinate mortgage the right to receive a maximum of 9 to 12 percent of the unpaid principal and interest on the subordinate mortgage out of the future appreciation, if any, on the property should likely provide the

be prescribed by the Secretary of HUD. The Secretary of HUD has delegated to the FHA Commissioner the power and authority to carry out all FHA mortgage insurance programs, including authority to issue rules or regulations to carry out these programs.

holder about the same risk-adjusted compensation as the holder would receive from a current cash payment equal to the approximate current market value of a delinquent subordinate lien of the same amount and CLTV.

Findings and Certifications

Administrative Procedure Act

This final rule is being issued and will become effective without a public comment period. Section 553(a) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) provides that advance notice and public comment procedures do not apply to a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts (see 5 U.S.C. 553(a)). This final rule establishes regulations for a new mortgage insurance program under the supervision of the Board and is therefore exempt from notice and comment rulemaking as provided in 5 U.S.C. 553(a).

This final rule will become effective upon publication in the **Federal Register**. Section 553(d) of the APA provides that substantive rules, such as this rule, shall be made effective not less than 30 days after publication unless, among other things, an agency finds good cause to provide an earlier effective date. Good cause exists for these regulations to be immediately effective. This is a voluntary and temporary program designed to address the immediate needs of homeowners facing foreclosure, and HERA provides for this Program to begin October 1, 2008, in order that homeowners can take advantage of the mortgage relief offered by this Program. The immediate effective date of this rule is consistent with the statutory authority. The objective for expedient action by the Board to have this Program commence at the beginning of the new Federal fiscal year is motivated by the high level of at-risk borrowers and weak conditions in the housing market.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, **Regulatory Planning and Review**. OMB determined that this rule is an economically significant regulatory action as defined in section 3(f) of the Order. Accordingly, an economic analysis was prepared for this rule.

This Program has the potential to have significant economic benefits. The major unknown is participation. If 10,000 participate in the Program, the aggregate net benefit of the Program may

exceed \$100M. It is possible that there will be more participants than 10,000, or less, in which case the net benefits increase or decrease, as the case may be. There are other factors important in determining the aggregate impact on the economy. The net benefit to the lender was estimated to be \$10,000 but, as the economic analysis discusses, it may be higher. A higher net benefit to the senior lien holder would increase the expected benefit of preventing a foreclosure. There are also economic benefits to the community from preventing foreclosure. HUD anticipates that the net economic benefits will exceed the costs based on initial analysis.

The docket file for this rule, which includes the economic analysis, is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

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

Congressional Review Act

OMB has determined that this rule constitutes a "major rule" as defined in

the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). Generally, a major rule under the CRA has a 60-day delayed effective date and is required to be submitted to Congress in accordance with the requirements of the CRA. Section 808 of the CRA allows a rule to become effective sooner than otherwise provided by the CRA, if the agency, for good cause, finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This finding and a brief statement of the reasons for the finding must be incorporated in the rule. (See 5 U.S.C. 808(2)). As stated in this preamble under the section that addresses APA requirements, this rule is exempt from the notice and comment procedures of the APA. As also discussed in connection with the APA requirements, this Program is a voluntary and temporary measure designed to prevent eligible borrowers whose mortgages are at risk of foreclosure from losing their homes. Some of these borrowers are facing foreclosure now or may in the very near future, making the need for implementation of the Program immediate. A 60-day delay in the effective date of this rule would therefore be contrary to the public interest. Thus, good cause exists to make this rule effective as close as possible to October 1, 2008, which is the date on which the HERA provides for the Program to begin. The Board will submit this rule and other required information to Congress as required by the CRA.

List of Subjects in 24 CFR Part 4001

Administrative procedures, Practice and procedure, Mortgage insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the Hope for Homeowners Program establishes a new Chapter XXIV consisting of part 4001 in Title 24 of the Code of Federal Regulations to read as follows:

CHAPTER XXIV—BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

PART 4001—HOPE FOR HOMEOWNERS PROGRAM

Subpart A—HOPE for Homeowners Program—General Requirements

Sec	
4001.01	Purpose of program.
4001.03	Requirements and delegated authority.
4001.05	Approval of mortgagees.
4001.07	Definitions.

Subpart B—Eligibility Requirements and Underwriting Procedures

- 4001.102 Cross-reference.
- 4001.104 Eligible mortgages.
- 4001.106 Eligible mortgagors.
- 4001.108 Eligible properties.
- 4001.110 Underwriting.
- 4001.112 Income verification.
- 4001.114 Appraisal.
- 4001.116 Representations and prohibitions.
- 4001.118 Equity sharing.
- 4001.120 Appreciation sharing.
- 4001.122 Fees and closing costs.

Subpart C—Rights and Obligations under the Contract of Insurance

- 4001.201 Cross-reference.
- 4001.203 Calculation of upfront and annual mortgage insurance premiums for Program mortgages.

Subpart D—Servicing responsibilities

- 4001.301 Cross-reference.
- 4001.303 Prohibition on subordinate liens during first five years.

Subpart E—Enforcement**Mortgagor False Information**

- 4001.401 Notice of false information from mortgagor-procedure.

Appraiser Independence

- 4001.403 Prohibitions on interested parties in insured mortgage transaction.

Mortgagees

- 4001.405 Mortgagees.

Appendix A to Part 4001—Calculation of Future Appreciation Payment.

Authority: 12 U.S.C. 1701z–22.

Subpart A—HOPE for Homeowners Program—General Requirements**§ 4001.01 Purpose of program.**

The HOPE for Homeowners Program is a temporary program authorized by section 257 of the National Housing Act, established within the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) that offers homeowners and existing loan holders (or servicers acting on their behalf) FHA insurance on refinanced loans for distressed borrowers to support long-term sustainable homeownership by, among other things, allowing homeowners to avoid foreclosure. The HOPE for Homeowners Program is administered by HUD through FHA.

§ 4001.03 Requirements and delegated authority.

(a) *Core requirements.* This subpart establishes the core requirements for the HOPE for Homeowners Program that have been adopted by the Board of Directors (Board) for the HOPE for Homeowners Program (Program). In addition to the core requirements, codified in this subpart, the Board of

Directors may adopt and issue additional requirements, standards and policies through non-codified regulations, including through order, **Federal Register** notice, or other statement, such as a mortgagee letter, to be issued and implemented by FHA.

(b) *Basic Program parameters.* (1) FHA is authorized to insure eligible refinanced mortgages under the Program commencing no earlier than October 1, 2008. The authority to insure additional mortgages under the Program expires September 30, 2011.

(2) Under this Program, an eligible mortgagor may obtain a refinancing of his or her existing mortgage(s) with a new mortgage loan insured by FHA, subject to conditions and restrictions specified in section 257 of the National Housing Act and requirements established by the Board.

(c) *Delegated authority.* HUD is statutorily charged with administering, through FHA, the Program. In carrying out the Program requirements established by the Board, FHA is directed to issue such interim guidance and mortgagee letters as FHA determines necessary or appropriate, within the parameters of the requirements, standards and policies adopted by the Board. In addition to FHA's statutory charge, the Board of Directors authorizes FHA to address unique or case-by-case situations as may be encountered by FHA in carrying out the Program, and to take such action as may be necessary to implement the Board's requirements. This delegated implementing authority includes, but is not limited to, specifying application forms, mortgage application procedures, certifications or other assurances, and other information collection requirements, subject to such rules, standards and policies as the Board may adopt.

(d) *Other applicable requirements.* Except as may be otherwise provided by the Board, the provisions and requirements in the FHA regulations in 24 CFR part 203, which are generally applicable to all FHA-insured single family mortgage insurance programs, also apply with respect to the insurance of a refinanced eligible mortgage under the Program.

§ 4001.05 Approval of mortgagees.

(a) *Eligibility.* In order for a mortgage to be eligible for insurance under this part, the mortgagee originating the mortgage loan and seeking mortgage insurance under this part shall have been approved by the Secretary pursuant to 24 CFR part 202.

(b) *Mortgagee whose loan is to be refinanced.* A mortgagee holding or

servicing an eligible mortgage to be refinanced and insured under section 257 of the National Housing Act is not required to be an approved mortgagee as required in paragraph (a) of this section, unless it seeks to be the originator of the refinanced mortgage to be insured by FHA.

§ 4001.07 Definitions.

As used in this part and in the Program, the following definitions apply.

Act means the National Housing Act (12 U.S.C. 1701 *et seq.*).

Allowable closing costs mean charges, fees and discounts that the mortgagee may collect from the mortgagor as provided in 24 CFR 203.27(a).

Board means the Board of Directors for the HOPE for Homeowners Program, which is comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation or the designees of each such individual.

Capital improvements means a repair, renovation, or addition to a property that significantly enhances the value of the property, but does not include expenses for interior decor, landscape maintenance, or normal maintenance or replacement expenses.

Contract of insurance means the agreement by which FHA provides mortgage insurance to a mortgagee.

Default and delinquency fees means late charges contained in a mortgage/ security instrument for the late or non-receipt of payments from mortgagors after the date upon which payment is due, including charges imposed by the mortgagee for the return of payments on the mortgage due to non-sufficient funds.

Direct financial benefit, as used in section 257(e)(1)(A)(ii)(II) of the Act, consists of the greater of two factors:

(1) The amount of initial equity the mortgagor has in the property at the closing for the Program mortgage as determined under § 4001.118; and

(2) The total amount that the existing senior mortgage and all existing subordinate mortgages on the property have been written down.

Disposition means any transaction that results in whole or partial transfer of title of a property other than—

(1) A sale of the property; or
 (2) Any transaction or transfer specified in 12 U.S.C. § 1701j-3(d)(1) through (8).

Eligible Mortgage means a mortgage as defined in § 4001.104.

Existing senior mortgage means an eligible mortgage that has superior

priority and is being refinanced by a mortgage insured under section 257 of the Act.

Existing subordinate mortgage means a mortgage that is subordinate in priority to an eligible mortgage which is being refinanced by a mortgage insured under section 257 of the Act.

FHA means the Federal Housing Administration.

HOPE for Homeowners Program (or Program) means the program established under section 257 of the Act.

HUD means the Department of Housing and Urban Development.

Intentionally defaulted for purposes of section 257(e)(1)(A) of the Act means the mortgagor:

(1) Knowingly failed to make payment on the mortgage or debt;

(2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and

(3) The debt was not subject to a bona fide dispute.

Mortgage has the same meaning as provided in 24 CFR 203.17(a)(1).

Mortgagee has the same meaning as provided in 24 CFR 203.251(f).

Mortgagor has the same meaning as provided in 24 CFR 203.251(e).

Premium pricing means the price for the sale of a mortgage loan with an above market rate of interest.

Prepayment penalties mean such amounts as defined in 12 CFR 226.32(d)(6) of the Federal Reserve Board's Regulation Z (Truth in Lending).

Primary residence means the dwelling where the mortgagor maintains his or her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can only have one primary residence.

Program mortgage means the mortgage into which the existing senior mortgage is refinanced.

Secretary means the Secretary of Housing and Urban Development.

Total monthly mortgage payment means the sum of:

(1) Principal and interest, as determined on a fully indexed and fully amortized basis; and

(2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners' association dues, ground rent, special assessments, water and sewer charges and other similar charges required by the note or security instrument; or

(ii) For mortgages not subject to escrow deposits, $\frac{1}{12}$ of the estimated

annual costs for items listed in paragraph (2)(i) of this definition.

Subpart B—Eligibility Requirements and Underwriting Procedures

§ 4001.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-family dwellings to be insured under section 257 of the National Housing Act (12 U.S.C. 1701z–22), except the following provisions: 203.7 Commitment Process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder's warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor's minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200–203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart A, to the "Mutual

Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part the provisions of this part shall control.

§ 4001.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

(a) Have been originated on or before January 1, 2008;

(b) Be secured by a property owned and occupied by the mortgagor as his or her primary residence, and be the only residence in which the mortgagor has any present ownership interest; and

(c) Meet such other requirements as the Board may adopt.

§ 4001.106 Eligible mortgagors.

In order for a mortgagor to be eligible to refinance his or her existing mortgages under section 257 of the Act, the mortgagor must:

(a) Have had, on March 1, 2008, a monthly total mortgage payment of more than 31 percent of the mortgagor's monthly gross income;

(b) Not have an ownership interest in any other residential property;

(c) Not have been convicted of fraud under federal or state law in the past 10 years;

(d) Certify that the mortgagor has not intentionally defaulted on any mortgage or debt and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for purposes of obtaining any Program mortgage; and

(e) Meet such other requirements as the Board may adopt.

§ 4001.108 Eligible properties.

(a) A mortgage may be insured under the Program only if the property that is to be the security for the mortgage is a one-family residence.

(b) The following property types are eligible to secure a mortgage insured under the Program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law except state taxation law.

§ 4001.110 Underwriting.

A mortgage may be insured under the Program only if the following conditions are met:

(a) *Debt-to-income thresholds.* Except as provided in paragraph (c) of this section:

(1) *Payment-to-income.* The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 31 percent of the mortgagor's monthly gross income; and

(2) *Debt-to-income.* The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 43 percent of the mortgagor's monthly gross income.

(b) *Past credit performance.* The mortgagor must have made at least six full payments on the existing senior mortgage being refinanced under the Program.

(c) *Trial modifications.* For any mortgagor who is unable to meet the requirements of paragraph (a) of this section, a mortgage loan may nevertheless be presented for insurance by FHA under the Program if:

(1) The mortgagor, using existing income, has made full and timely mortgage payments on the existing senior mortgage pursuant to the terms of the trial modification:

(i) For the three consecutive months before submission of the application for the mortgage to be insured under the Program; and

(ii) In an amount that is at least 90 percent of the estimated total monthly mortgage payment to be paid by the mortgagor on the Program mortgage.

(2) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 38 percent of the mortgagor's monthly income; and

(3) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 50 percent of the mortgagor's monthly gross income.

(d) *Non-occupant co-borrowers.* A mortgage loan may be insured by the FHA under the Program, even if one of the mortgagors on the loan (*i.e.*, a co-signer) does not reside at the residence securing the loan, provided that the non-resident mortgagor relinquishes all interests in the property that is to be security for the mortgage before an application is submitted for FHA insurance under the Program.

(e) *Amount of new mortgage payment.* The mortgagor's total monthly payment on the mortgage to be insured under the Program must not be greater than the mortgagor's aggregate total monthly mortgage payment under the mortgagor's existing senior mortgage and all existing subordinate mortgages.

(f) *Limit on origination fees.* Mortgagees may charge and collect from mortgagors allowable closing costs.

§ 4001.112 Income verification.

The mortgagee shall use FHA's procedures to verify the mortgagor's income and shall comply with the following additional requirements:

(a) The mortgagee shall document and verify the income of the mortgagor by obtaining a transcript of the borrower's Federal income tax returns or a copy of the borrower's Federal income tax returns obtained directly from the Internal Revenue Service for the most recent two years; and

(b) The mortgagee shall document and verify the mortgagor's income in any case in which the mortgagor has not filed a Federal income tax return.

§ 4001.114 Appraisal.

(a) The property shall be appraised by an appraiser on the FHA Appraiser Roster.

(b) An appraisal of a property to be security for a Program mortgage shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) but dated no more than 90 days from the date on which the mortgage transaction is closed, except as otherwise provided by the Board.

(c) The mortgagee must inform the appraiser that copies of the appraisal may be shared with holders and servicers of existing subordinate mortgages.

§ 4001.116 Representations and prohibitions.

(a) *Underwriting and appraisal standards.* In order for the Program mortgage to be eligible for insurance under the Program, the underwriter and the mortgagee must provide certifications, in a format approved by the FHA, that the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the Program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as the FHA deems necessary given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.* (1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other debt; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the mortgagor's existing mortgage(s).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under a Program mortgage shall agree in writing, on a form approved by the Board, to be liable to pay to FHA any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the Program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for Program eligibility, including but not limited to the certifications required under section 257(e)(1)(A)(i) of the Act.

(c) *Mortgagee in violation of Program requirements.* (1) If the mortgagee holds a Program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the Program requirements, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the Program mortgage that it originated and/or underwrote, FHA will pay the insurance claim to the mortgagee presently holding the Program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of Program requirements) and shall seek indemnification from the non-holding mortgagee.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within 120 days from the date of closing of the mortgage, or such other time as the Board may prescribe. The binder shall include evidence acceptable to the Board that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within the time frame established in paragraph (d) of this section. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

§ 4001.118 Equity sharing.

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of a Program mortgage on a property, as calculated by the Program mortgage lender, shall equal:

(1) The appraised value of the property that was used at the time of origination of the Program mortgage to

underwrite the mortgage and to determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act; less

(2) The original principal amount of the Program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property or Program mortgage refinancing, FHA shall calculate and be entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act, subject to such standards and policies as the Board may establish.

§ 4001.120 Appreciation sharing.

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing a Program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) The gross proceeds from the sale or disposition of the property (calculated at the pre-default rate of interest); less

(2) The amount of closing costs, as adopted by the Board, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) Seventy-five percent, as may be modified by the Board, of the actual expenditures for Capital Improvements made by the mortgagor(s) after the date of origination of the Program mortgage; and less

(4) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite that mortgage and determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing a Program mortgage, FHA shall be entitled to receive an amount equal to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section.

(c) *Eligibility of subordinate mortgage holders to receive a portion of appreciation in value.* The persons or entities that hold, on the date of origination of a Program mortgage, an existing subordinate mortgage on the property shall be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such

additional standards and policies that the Board may establish, if:

(1) The existing subordinate mortgage was originated on or before January 1, 2008;

(2) The amount of the unpaid principal and interest on such existing subordinate mortgage on the date of origination of the Program mortgage is at least \$2,500; and

(3) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the Program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage shall be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property up to the amount set forth in the Appendix to this part.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing a Program mortgage, the interests of such eligible existing subordinate mortgages under paragraph (d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the Program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing a Program mortgage other than sale or disposition related to a default, any proceeds due to FHA as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

§ 4001.122 Fees and closing costs.

(a) The holder or servicer of the existing senior and subordinate

mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.

(b) Allowable closing costs incurred in connection with the refinancing and insurance of a mortgage under the Program can be paid from the following sources:

(1) The mortgagor's assets;

(2) The mortgagee holding or servicing the existing senior and subordinate mortgage or the mortgagee originating the Program mortgage;

(3) Premium pricing by the mortgagee providing the Program mortgage;

(4) Financed as part of the Program mortgage provided that the mortgage amount is adjusted accordingly, and the loan-to-value ratio does not exceed 90 percent (including the up-front premium required under § 4001.203(a)(1));

(5) A Federal, state, county or parish, or municipal program; or

(6) Such other sources as the Board may permit.

Subpart C—Rights and Obligations Under the Contract of Insurance

§ 4001.201 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart B, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except the following sections:* 203.256 Insurance of open-end advances; 203.259a Scope; 203.260 Amount of insurance premium; 203.261 Calculation of periodic MIP (periodic MIP); 203.270 Open-end insurance charges; 203.280 One-time of Up-front MIP; 203.281 Calculation of one-time MIP; 203.283 Refund of one-time MIP; 203.284 Calculation of up-front and annual MIP on or after July 1, 1991; 203.285 Fifteen year mortgages: calculation of up-front and annual MIP on or after December 26, 1992; 203.415–203.417 Certificate of Claim; 203.420–203.427 Mutual Mortgage Insurance Fund and Distributive Shares; 203.436 Claim procedures—graduated payment mortgages; 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act; 203.439a Mortgages on property in Allegheny Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act; and 203.440–203.495 Rehabilitation Loans.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart B, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part

203, subpart B, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart B, to this part 4001, the provisions of part 4001 shall control.

§ 4001.203 Calculation of upfront and annual mortgage insurance premiums for Program mortgages.

(a) *Applicable premiums.* Any mortgage presented for endorsement under section 257 on or after October 1, 2008, and prior to September 30, 2011, shall be subject to the following requirements:

(1) *Upfront premium.* FHA shall establish and collect a single premium payment equal to 3 percent of the amount of the original insured principal obligation of the Program mortgage.

(2) *Annual premium.* In addition to the premium under paragraph (a)(1) of this section, FHA shall establish and collect an annual premium payment in an amount equal to 1.5 percent of the amount of the remaining insured principal balance of the Program mortgage.

(b) *Proceeds for payment of the upfront premium.* The up-front premium shall be paid with proceeds from the Program mortgage through a reduction of the amount of indebtedness that existed on the eligible mortgage prior to its being refinanced.

Subpart D—Servicing Responsibilities

§ 4001.301 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart C, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except as follows*: 203.664 Processing defaulted mortgages on property located on Indian land; 203.665 Processing defaulted mortgages on property located on Hawaiian home lands; 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians; and 203-670-203.681 Occupied Conveyance.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart C, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart C, to the "Mutual Mortgage Insurance Fund" shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to "the

Commissioner" shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart C, to this part 4001, the provisions of part 4001 shall control.

§ 4001.303 Prohibition on subordinate liens during first five years.

(a) *Prohibition on subordinate liens during first five years.* Except as provided in paragraph (b) of this section, a mortgagor shall not, during the first 5 years of the term of the mortgagor's Program mortgage, incur any debt, take any action, or fail to take any action that would have the direct result of causing a lien to be placed on the property securing the Program mortgage if such lien would be subordinate to the Program mortgage.

(b) *Property preservation exception.* Paragraph (a) of this section shall not prevent a mortgagor on the Program mortgage from incurring new mortgage debt secured by a lien on the property securing the Program mortgage that is subordinate to the Program mortgage if:

(1) The proceeds of the new mortgage debt are necessary to ensure the maintenance of property standards, including health and safety standards;

(2) Repair or remediation of the condition would preserve or increase the property's value;

(3) The cost of the proposed repair or remediation is reasonable for the geographic market area;

(4) The results of the repair or remediation are not primarily cosmetic;

(5) The repair or remediation does not represent routine maintenance;

(6) The new mortgage debt is closed-end credit, as defined in § 226.2 of the Federal Reserve Board's Regulation Z (12 CFR 226.2); and

(7) The sum of the unpaid principal balance and accrued and unpaid interest on the Program mortgage and the original principal balance of the new mortgage debt:

(i) Does not exceed 95 percent of the estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; and

(ii) Is less than:

(A) The estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; less

(B) FHA's proportionate share of the initial equity created upon origination of the Program mortgage as determined pursuant to the schedule set forth in section 257(k)(1) of the Act as if a sale of the property had occurred on the date of origination of the new mortgage debt.

Subpart E—Enforcement

Mortgagor False Information

§ 4001.401 Notice of false information from mortgagor-procedure.

(a) If FHA finds that the mortgagor has made a false certification or provided false information via any means, including but not limited to false documentation, FHA shall inform the mortgagor, in writing or any other acceptable format, of such fact.

(b) The notice shall be sent to the mortgagor's last known address by both certified and ordinary mail. The notice shall state with specificity the misrepresentation or false statement made by the mortgagor. The notice shall include a request for repayment of the Direct Financial Benefit that the mortgagor is deemed to have received, as determined by FHA, by the refinancing of the eligible mortgage and subordinate mortgages. This does not preclude HUD or the United States from bringing any other action that they may be authorized to bring.

(c) The mortgagor may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

Appraiser Independence

§ 4001.403 Prohibitions on interested parties in insured mortgage transaction.

(a) A mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof, and any person with an interest in a real estate transaction involving an appraisal conducted as part of the process for insuring a mortgage under section 257 of the Act shall not improperly influence or attempt to improperly influence through any means, including but not limited to coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result or review of a real estate appraisal sought in connection with the origination, processing and closing of the mortgage for insurance.

(b) HUD may, pursuant to its authority under section 536(a) of the Act, bring an action to impose a civil money penalty for a violation of paragraph (a) of this section.

(c) The authority to bring a civil money penalty under this section shall not preclude HUD from bringing any other action that HUD may be

authorized to bring for a violation of paragraph (a) of this section.

Mortgagees

§ 4001.405 Mortgagees.

(a) FHA is authorized by the Board to engage in monitoring activities to ensure mortgagee compliance with the requirements of this Program. The Mortgage Review Board at HUD is authorized by the Board to impose sanctions and civil money penalties against mortgagees that violate program requirements under this part. The authority of the Mortgage Review Board to impose sanctions and civil penalties shall not preclude HUD from bringing any other action that HUD may be authorized to bring.

(b) Nonpayment of mortgage insurance claims for reasons established in § 4001.16 shall not preclude the Mortgage Review Board or HUD from bringing any action against the mortgagee that the Mortgage Review Board or HUD are authorized to bring.

(c) The mortgagee may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

Appendix A to Part 4001—Calculation of Future Appreciation Payment

Subordinate lien holder's CLTV	Percent of unpaid principal and interest that lien holder is eligible to receive
Cumulative CLTV >135%	9%

Subordinate lien holder's CLTV	Percent of unpaid principal and interest that lien holder is eligible to receive
Cumulative CLTV ≤135%	12%

Note: Appreciation payment to a subordinate lien holder will depend on actual appreciation at the time of sale of the property and will be limited by the amount of future appreciation HUD receives. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the H4H mortgage is originated, and will be based upon principal and interest on the date of origination of the Program mortgage, calculated at the pre-default contract rate of interest.

Dated at Washington, DC, this 30th day of September, 2008.

By order of the Board of Directors of the HOPE for Homeowners Program.

Margaret E. Burns,

Executive Director of the Board.

[FR Doc. E8-23612 Filed 10-3-08; 8:45 am]

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Federal Register

**Monday,
October 6, 2008**

Part VII

The President

**Proclamation 8297—National Breast
Cancer Awareness Month, 2008**

**Proclamation 8298—National Disability
Employment Awareness Month, 2008**

**Proclamation 8299—National Domestic
Violence Awareness Month, 2008**

Presidential Documents

Title 3—

Proclamation 8297 of October 1, 2008

The President

National Breast Cancer Awareness Month, 2008

By the President of the United States of America

A Proclamation

During National Breast Cancer Awareness Month, we underscore our commitment to fighting and preventing this devastating disease. Breast cancer is one of the most common types of cancer among women, and we must strengthen our support of those who are living with this disease while continuing to work toward a cure.

Breast cancer can be attributed to many factors, including age, genetics, obesity, and family history. Women who exercise regularly, maintain healthy diets, and have yearly visits with their doctors are less likely to get breast cancer. Various screening measures such as mammograms, regular breast self-exams, and clinical breast exams can help detect cancer before it has a chance to spread. Early detection allows for early intervention, helps make treatment more effective, and gives hope to patients and saves lives.

America leads the world in medical research, and my Administration will continue to support efforts to treat and cure breast cancer. Since 2005, the Cancer Genome Atlas has studied the genetic sources of all types of cancer, and last year, I signed the “National Breast and Cervical Cancer Early Detection Program Reauthorization Act of 2007,” which will help millions of low-income and uninsured women get the screenings they need to detect cancer early. First Lady Laura Bush has encouraged women around the world to take charge of their health and emphasized the importance of screenings and early detection. In partnership with Federal agencies, State health agencies, and other medical professionals, my Administration has taken action to improve our Nation’s healthcare system and helped promote the prevention, detection, and treatment of breast cancer.

This month, we honor those currently battling the disease and all who have survived the fight against breast cancer. We are inspired by their strength and determination. We recognize and applaud the hard-working caregivers and researchers who are dedicated to providing comfort and assistance to those with breast cancer and to treating and curing this disease. We also remember those lost to breast cancer and extend our thoughts and prayers to their families.

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 the laws of the United States, do hereby proclaim October 2008 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, health care professionals, educators, volunteers, and the people of the United States to continue our Nation’s strong commitment to preventing, treating, and ultimately curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E8-23724

Filed 10-3-08; 8:45 am]

Billing code 3195-W9-P

Presidential Documents

Title 3—**Proclamation 8298 of October 1, 2008****The President****National Disability Employment Awareness Month, 2008****By the President of the United States of America****A Proclamation**

During National Disability Employment Awareness Month, we reaffirm our commitment to ensuring that our Nation's promise extends to all our citizens. Millions of Americans live with disabilities, and many other Americans will become disabled at some point in their lives. To integrate people with disabilities more fully into every aspect of life, our country is working to advance greater freedoms at work, in schools, and throughout communities. By expanding employment opportunities and fighting false perceptions that hinder people living with disabilities from joining the workforce, we can uphold America's moral values, strengthen our economy, and make America a more hopeful place.

More than 7 years ago, my Administration announced the New Freedom Initiative, which expanded upon the landmark reforms of the Americans with Disabilities Act. Since then, the Initiative has increased access for people with disabilities through technology, provided additional educational opportunities for youth, and integrated more Americans into the workforce. My Administration remains committed to empowering all people to reach their full educational, social, and professional goals. To learn more about the Federal Government's disability-related programs, please visit DisabilityInfo.gov.

To recognize the contributions of Americans with disabilities and to encourage all citizens to ensure equal opportunity in the workforce, the Congress has designated October of each year (36 U.S.C. 121) as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 2008 as National Disability Employment Awareness Month. I call upon Government officials, labor leaders, employers, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E8-23728

Filed 10-3-08; 8:45 am]

Billing code 3195-W9-P

Presidential Documents

Title 3—**Proclamation 8299 of October 1, 2008****The President****National Domestic Violence Awareness Month, 2008****By the President of the United States of America****A Proclamation**

Our Nation has a moral obligation to work to prevent domestic violence and address its brutal and destructive effects. During National Domestic Violence Awareness Month, we underscore our commitment to helping individuals across our country who face such devastating violence.

My Administration remains dedicated to eradicating domestic violence and helping victims find the compassion, comfort, and healing they need. In 2003, I announced the creation of the Family Justice Center Initiative to help local communities provide comprehensive services at one location for victims of domestic violence. In 2006, I was proud to sign legislation that reauthorized the Violence Against Women Act to improve criminal justice responses to domestic violence, sexual assault, and stalking. The Department of Justice's Domestic Violence Transitional Housing Assistance Program also offers victims of violence counseling and transitional housing services so they can escape the cycle of abuse.

During this month, we rededicate ourselves to protecting vulnerable members of our society and ensuring domestic abusers are punished to the full extent of the law. We encourage victims of domestic violence and their families to seek assistance through Family Justice Centers and the National Domestic Violence Hotline at 1-800-799-SAFE. Together, we can help heal hearts and build a culture in which all Americans can pursue their dreams and realize the great promise of our Nation.

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 October 2008, as National Domestic Violence Awareness Month. I urge all Americans to reach out to victims of domestic violence and take action to make ending domestic violence a national priority.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. E8-23730

Filed 10-3-08; 8:45 am]

Billing code 3195-W9-P

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Vol. 73, No. 194

Monday, October 6, 2008

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

56935-57234.....	1
57235-57474.....	2
57475-58018.....	3
58019-58434.....	6

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

8294.....	57223
8295.....	57233
8296.....	57475
8297.....	58429
8298.....	58431
8299.....	58433

Executive Orders:

12962 (amended by 13474).....	57229
13474.....	57229

5 CFR

295.....	58019
----------	-------

7 CFR

984.....	57485
----------	-------

8 CFR

100.....	58023
212.....	58023

10 CFR

50.....	57235
---------	-------

Proposed Rules:

35.....	58063
---------	-------

12 CFR

204.....	57488
263.....	58031
740.....	56935
792.....	56936

Proposed Rules:

701.....	57013
742.....	57013

13 CFR

121.....	56940
124.....	57490
125.....	56940
127.....	56940
134.....	56940

Proposed Rules:

121.....	57014
125.....	57014
127.....	57014
134.....	57014

14 CFR

33.....	57235
39.....	56956, 56958, 56960, 58032

Proposed Rules:

91.....	57270
---------	-------

15 CFR

730.....	56964
732.....	56964, 57495
734.....	56964, 57495
736.....	56964

738.....	57495
740.....	57495
742.....	57495, 58033
744.....	57495, 58033
746.....	57495
748.....	57495
750.....	57495
762.....	56964, 57495
770.....	57495
772.....	57495
774.....	56964, 57495, 58033

Proposed Rules:

740.....	57554
772.....	57554

16 CFR

Proposed Rules:

1500.....	58063
-----------	-------

17 CFR

143.....	57512
190.....	57235
229.....	57237
230.....	58300
239.....	58300
240.....	58300
249.....	58300

18 CFR

35.....	57515
131.....	57515
154.....	57515
157.....	57515
250.....	57515
281.....	57515
284.....	57515
300.....	57515
341.....	57515
344.....	57515
346.....	57515
347.....	57515
348.....	57515
375.....	57515
385.....	57515

Proposed Rules:

806.....	57271
----------	-------

22 CFR

126.....	58041
----------	-------

24 CFR

4001.....	58418
-----------	-------

27 CFR

447.....	57239
478.....	57239
479.....	57239
555.....	57239

29 CFR

403.....	57412
----------	-------

30 CFR

950.....	57538
----------	-------

32 CFR	180.....56995	Proposed Rules:	172.....57001, 57008
Proposed Rules:	Proposed Rules:	403.....58085	173.....57001
553.....57017	50.....58080	8360.....57564	175.....57001
33 CFR	51.....58080	47 CFR	176.....57001
100.....57242	52.....57272, 58084	0.....57543	178.....57001
110.....57244	63.....58352	25.....56999	179.....57001
Proposed Rules:	80.....57274	73.....56999, 57268, 57551,	180.....57001
117.....58070	180.....57040	57552	Proposed Rules:
36 CFR	262.....58388	Proposed Rules:	109.....57281
1228.....57245	264.....58388	27.....57750	571.....57297
37 CFR	265.....58388	73.....57280	
Proposed Rules:	266.....58388	90.....57750	50 CFR
201.....58073	271.....58388	400.....57567	222.....57010
385.....57033	42 CFR	48 CFR	223.....57010
40 CFR	34.....58047	Proposed Rules:	622.....58058, 58059
50.....58042	411.....57541	501.....57580	679.....57011, 57553, 58061
52.....56970, 57246	412.....57541	515.....57580	697.....58059
62.....56981	413.....56998, 57541	552.....57580	Proposed Rules:
80.....57248	422.....57541	49 CFR	17.....57314
81.....56983	441.....57854	1.....57268	226.....57583
	489.....57541	89.....57268	679.....57585
	43 CFR	171.....57001	697.....58099
	11.....57259		

REMINDERS

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.

RULES GOING INTO EFFECT OCTOBER 6, 2008**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Walnuts Grown in California; Increased Assessment Rate; published 10-3-08

AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

Common Crop Insurance Regulations; Dry Pea Crop Provisions; published 9-4-08

BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

HOPE for Homeowners Program; Program Regulations; published 10-6-08

COMMERCE DEPARTMENT Industry and Security Bureau

Revisions to the Export Administration Regulations based upon a Systematic Review of the CCL; published 10-6-08

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans; Colorado; published 8-7-08
Maryland; NOx and SO2 Emissions Limitations for Fifteen Coal-Fired Electric Generating Units; published 9-4-08

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; Noyack and Water Mill, NY; published 9-9-08

HEALTH AND HUMAN SERVICES DEPARTMENT Centers for Disease Control and Prevention

Medical Examination of Aliens; Revisions to Medical Screening Process; published 10-6-08

HOMELAND SECURITY DEPARTMENT**U.S. Customs and Border Protection**

Issuance of a Visa and Authorization for Temporary

Admission into the United States for Certain Nonimmigrant Aliens Infected with HIV; published 10-6-08

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Home Equity Conversion Mortgages; Determination of Maximum Claim Amount; and Eligibility for Discounted Mortgage Insurance Premium for Certain Refinanced HECM Loans; published 9-4-08

PERSONNEL MANAGEMENT OFFICE

Testimony by OPM Employees Relating to Official Information and Production of Official Records in Legal Proceedings; published 10-6-08

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness Directives: Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 Series Turboprop Engines; Correction; published 10-6-08

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Rural Utilities Service**

Interconnection of Distributed Resources; comments due by 10-14-08; published 8-13-08 [FR E8-18800]

COMMERCE DEPARTMENT Foreign-Trade Zones Board

Applications for Subzones: Foreign Trade Zone 77 - Memphis, TN; Black and Decker Corp., etc.; comments due by 10-14-08; published 8-14-08 [FR E8-18849]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fisheries in the Western Pacific: Pelagic Fisheries; Squid Jig Fisheries; comments due by 10-14-08; published 8-28-08 [FR E8-20004]

Fisheries in Western Pacific: Crustacean Fisheries; Deepwater Shrimp; comments due by 10-14-08; published 8-14-08 [FR E8-18854]

Interagency Cooperation under the Endangered Species Act; comments due by 10-14-08; published 9-12-08 [FR E8-21414]

DEFENSE DEPARTMENT Defense Acquisition Regulations System

Defense Federal Acquisition Regulation Supplement: Competition Requirements for Purchases from Federal Prison Industries (DFARS Case 2008-D015); comments due by 10-14-08; published 8-12-08 [FR E8-18506]

U.S.-International Atomic Energy Agency Additional Protocol; comments due by 10-17-08; published 8-18-08 [FR E8-19097]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Louisiana; comments due by 10-16-08; published 9-16-08 [FR E8-21196]

Michigan; PSD Regulations; comments due by 10-16-08; published 9-16-08 [FR E8-21620]

Approval and Promulgation of Implementation Plans and Operating Permits Program: Missouri; comments due by 10-15-08; published 9-15-08 [FR E8-21183]

Approval and Promulgation of Implementation Plans: Alabama; Volatile Organic Compounds and Open Burning; comments due by 10-15-08; published 9-15-08 [FR E8-21312]

Florida; Removal of Gasoline Vapor Recovery from Southeast Florida Areas; comments due by 10-16-08; published 9-16-08 [FR E8-21303]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Flubendiamide; Pesticide Tolerances; comments due by 10-14-08; published 8-13-08 [FR E8-18324]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; comments due by 10-15-08; published 9-15-08 [FR E8-21306]

Pesticide Tolerances:

Tebuconazole; comments due by 10-14-08; published 8-13-08 [FR E8-18625]

Tribenuron Methyl; comments due by 10-14-08; published 8-13-08 [FR E8-18189]

Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act, etc.:

Ferroalloys Production Facilities; comments due by 10-15-08; published 9-15-08 [FR E8-21509]

Thifensulfuron Methyl; Pesticide Tolerances; comments due by 10-14-08; published 8-13-08 [FR E8-18457]

Underground Storage Tank Program:

Approved State Program for Hawaii; comments due by 10-17-08; published 9-17-08 [FR E8-21497]

Withdrawals of Federal Antidegradation Policy: All Waters of the United States within the Commonwealth of Pennsylvania; comments due by 10-15-08; published 9-15-08 [FR E8-21464]

FEDERAL COMMUNICATIONS COMMISSION

Television Broadcasting Services: Atlantic City, NJ; comments due by 10-14-08; published 9-12-08 [FR E8-21206]
Bryan, TX; comments due by 10-14-08; published 9-12-08 [FR E8-21211]

FEDERAL TRADE COMMISSION

Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of the Energy Independence and Security Act (of 2007); comments due by 10-17-08; published 9-16-08 [FR E8-21605]

GENERAL SERVICES ADMINISTRATION

General Services Acquisition Regulation: GSAR Case 2008G515; Rewrite of GSAR Part 549, Termination of Contracts; comments due by 10-14-08; published 8-13-08 [FR E8-18722]

HEALTH AND HUMAN SERVICES DEPARTMENT Food and Drug Administration
General and Plastic Surgery Devices:

Reclassification of the Absorbable Hemostatic Device; Reopening of Comment Period; comments due by 10-14-08; published 9-11-08 [FR E8-21200]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Safety Zone; Captain of the Port Zone Jacksonville; Offshore Cape Canaveral, FL; comments due by 10-17-08; published 8-18-08 [FR E8-18996]

Safety Zones:

Fireworks Display, Potomac River, National Harbor, MD; comments due by 10-16-08; published 9-16-08 [FR E8-21551]

St. Croix Coral Reef Swim, Buck Island Channel, USVI; comments due by 10-16-08; published 9-16-08 [FR E8-21555]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Proposed Flood Elevation Determinations; comments due by 10-14-08; published 7-14-08 [FR E8-15982]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public Access to HUD Records under the Freedom of Information Act and Production of Material or Provision of Testimony by HUD Employees:

Revisions to Policies and Practices regarding Subpoenas and Other Demands for Testimony; comments due by 10-14-08; published 8-12-08 [FR E8-18282]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Frosted Flatwoods Salamander and Reticulated Flat; comments due by 10-14-08; published 8-13-08 [FR E8-17894]

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status:

Reticulated Flatwoods Salamander; Proposed Designation of Critical Habitat for Frosted Flatwoods Salamander and Reticulated Flatwoods Salamander; comments

due by 10-14-08; published 9-18-08 [FR E8-21878]

Interagency Cooperation under the Endangered Species Act; comments due by 10-14-08; published 9-12-08 [FR E8-21414]

LABOR DEPARTMENT

Veterans Employment and Training Service

Priority of Service for Covered Persons; comments due by 10-14-08; published 8-15-08 [FR E8-18869]

NUCLEAR REGULATORY COMMISSION

When Licensees Depart From a License Condition or Technical Specification in an Emergency; Clarified Requirements; comments due by 10-14-08; published 8-15-08 [FR E8-18918]

POSTAL REGULATORY COMMISSION

Periodic Reporting Rules; comments due by 10-16-08; published 9-15-08 [FR E8-21060]

SOCIAL SECURITY ADMINISTRATION

Revised Medical Criteria for Evaluating Hearing Loss; comments due by 10-14-08; published 8-13-08 [FR E8-18718]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A300-600 Airplanes; comments due by 10-17-08; published 9-17-08 [FR E8-21724]

Airbus Model A330 Airplanes, and Model A340 200 and A340-300 Series Airplanes; comments due by 10-17-08; published 9-17-08 [FR E8-21727]

Boeing Model 777 Airplanes; comments due by 10-14-08; published 8-29-08 [FR E8-20087]

Bombardier-Rotax GmbH 914 F Series Reciprocating Engines; comments due by 10-14-08; published 9-12-08 [FR E8-21282]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 10-17-08; published 9-17-08 [FR E8-21730]

Diamond Aircraft Industries GmbH Model DA 42

Airplanes; comments due by 10-17-08; published 9-17-08 [FR E8-21701]

McDonnell Douglas Model DC-9-30, DC-9-40, and DC-9-50 Series Airplanes et al.; comments due by 10-14-08; published 8-29-08 [FR E8-20082]

Pilatus Aircraft Ltd. Model PC 6 Series Airplanes; comments due by 10-17-08; published 9-17-08 [FR E8-21691]

PZL Swidnik S. A. Model W-3A Helicopters; comments due by 10-14-08; published 8-15-08 [FR E8-18805]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Federal Motor Vehicle Safety Standards:

Lamps, Reflective Devices, and Associated Equipment; comments due by 10-14-08; published 8-28-08 [FR E8-19837]

TREASURY DEPARTMENT Internal Revenue Service

Determining the Amount of Taxes Paid for Purposes of Section 901; comments due by 10-14-08; published 7-16-08 [FR E8-16331]

Employer Comparable Contributions to Health Savings Accounts and Requirement of Return for Filing of the Excise Tax; comments due by 10-14-08; published 7-16-08 [FR E8-16175]

Postponement of Certain Tax-related Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Actions; comments due by 10-14-08; published 7-15-08 [FR E8-15939]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program; Recoupment Provisions; comments due by 10-17-08; published 9-17-08 [FR E8-21699]

Terrorism Risk Insurance Program; Terrorism Risk Insurance Program Reauthorization Act Implementation; comments due by 10-16-08; published 9-16-08 [FR E8-21578]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Proposed Establishment of the Happy Canyon of Santa Barbara Viticultural Area

(2007R-311P); comments due by 10-14-08; published 8-12-08 [FR E8-18536]

Proposed Establishment of the Lake Chelan Viticultural Area (2007R-103P); comments due by 10-14-08; published 8-12-08 [FR E8-18534]

Proposed Establishment of the Upper Mississippi River Valley Viticultural Area (2007R-055P); comments due by 10-14-08; published 8-12-08 [FR E8-18535]

LIST OF PUBLIC LAWS

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H.R. 5551/P.L. 110-335

To amend title 11, District of Columbia Official Code, to implement the increase provided under the District of Columbia Appropriations Act, 2008, in the amount of funds made available for the compensation of attorneys representing indigent defendants in the District of Columbia courts, and for other purposes. (Oct. 2, 2008; 122 Stat. 3724)

H.R. 5893/P.L. 110-336

Library of Congress Sound Recording and Film Preservation Programs Reauthorization Act of 2008 (Oct. 2, 2008; 122 Stat. 3726)

S. 996/P.L. 110-337

To amend title 49, United States Code, to expand passenger facility fee eligibility for certain noise compatibility projects. (Oct. 2, 2008; 122 Stat. 3729)

Last List October 2, 2008

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Title	Stock Number	Price	Revision Date
1	(869-064-00001-7)	5.00	4 Jan. 1, 2008
2	(869-064-00002-5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869-064-00003-3)	35.00	1 Jan. 1, 2008
4	(869-064-00004-1)	13.00	Jan. 1, 2008
5 Parts:			
1-699	(869-064-00005-0)	63.00	Jan. 1, 2008
700-1199	(869-064-00006-8)	53.00	Jan. 1, 2008
1200-End	(869-064-00007-6)	64.00	Jan. 1, 2008
6	(869-064-00008-4)	13.50	Jan. 1, 2008
7 Parts:			
1-26	(869-064-00009-2)	47.00	Jan. 1, 2008
27-52	(869-064-00010-6)	52.00	Jan. 1, 2008
53-209	(869-064-00011-4)	40.00	Jan. 1, 2008
210-299	(869-064-00012-2)	65.00	Jan. 1, 2008
300-399	(869-064-00013-1)	49.00	Jan. 1, 2008
400-699	(869-064-00014-9)	45.00	Jan. 1, 2008
700-899	(869-064-00015-7)	46.00	Jan. 1, 2008
900-999	(869-064-00016-5)	63.00	Jan. 1, 2008
1000-1199	(869-064-00017-3)	22.00	Jan. 1, 2008
1200-1599	(869-064-00018-1)	64.00	Jan. 1, 2008
1600-1899	(869-064-00019-0)	67.00	Jan. 1, 2008
1900-1939	(869-064-00020-3)	31.00	Jan. 1, 2008
1940-1949	(869-064-00021-1)	50.00	Jan. 1, 2008
1950-1999	(869-064-00022-0)	49.00	Jan. 1, 2008
2000-End	(869-064-00023-8)	53.00	Jan. 1, 2008
8	(869-064-00024-6)	66.00	Jan. 1, 2008
9 Parts:			
1-199	(869-064-00025-4)	64.00	Jan. 1, 2008
200-End	(869-064-00026-2)	61.00	Jan. 1, 2008
10 Parts:			
1-50	(869-064-00027-1)	64.00	Jan. 1, 2008
51-199	(869-064-00028-9)	61.00	Jan. 1, 2008
200-499	(869-064-00029-7)	46.00	Jan. 1, 2008
500-End	(869-064-00030-1)	65.00	Jan. 1, 2008
11	(869-064-00031-9)	44.00	Jan. 1, 2008
12 Parts:			
1-199	(869-064-00032-7)	37.00	Jan. 1, 2008
200-219	(869-064-00033-5)	40.00	Jan. 1, 2008
220-299	(869-064-00034-3)	64.00	Jan. 1, 2008
300-499	(869-064-00035-1)	47.00	Jan. 1, 2008
500-599	(869-064-00036-0)	42.00	Jan. 1, 2008
600-899	(869-064-00037-8)	59.00	Jan. 1, 2008

Title	Stock Number	Price	Revision Date
900-End	(869-064-00038-6)	53.00	Jan. 1, 2008
13	(869-064-00039-4)	58.00	Jan. 1, 2008
14 Parts:			
1-59	(869-064-00040-8)	66.00	Jan. 1, 2008
60-139	(869-064-00041-6)	61.00	Jan. 1, 2008
140-199	(869-064-00042-4)	33.00	Jan. 1, 2008
200-1199	(869-064-00043-2)	53.00	Jan. 1, 2008
1200-End	(869-064-00044-1)	48.00	Jan. 1, 2008
15 Parts:			
0-299	(869-064-00045-9)	43.00	Jan. 1, 2008
300-799	(869-064-00046-7)	63.00	Jan. 1, 2008
800-End	(869-064-00047-5)	45.00	Jan. 1, 2008
16 Parts:			
0-999	(869-064-00048-3)	53.00	Jan. 1, 2008
1000-End	(869-064-00049-1)	63.00	Jan. 1, 2008
17 Parts:			
1-199	(869-064-00051-3)	53.00	Apr. 1, 2008
200-239	(869-064-00052-1)	63.00	Apr. 1, 2008
240-End	(869-064-00053-0)	65.00	Apr. 1, 2008
18 Parts:			
1-399	(869-064-00054-8)	65.00	Apr. 1, 2008
400-End	(869-064-00055-6)	29.00	Apr. 1, 2008
19 Parts:			
1-140	(869-064-00056-4)	64.00	Apr. 1, 2008
141-199	(869-064-00057-2)	61.00	Apr. 1, 2008
200-End	(869-064-00058-1)	34.00	Apr. 1, 2008
20 Parts:			
1-399	(869-064-00059-9)	53.00	Apr. 1, 2008
400-499	(869-064-00060-2)	67.00	Apr. 1, 2008
500-End	(869-064-00061-1)	66.00	Apr. 1, 2008
21 Parts:			
1-99	(869-064-00062-9)	43.00	Apr. 1, 2008
100-169	(869-064-00063-7)	52.00	Apr. 1, 2008
170-199	(869-064-00064-5)	53.00	Apr. 1, 2008
200-299	(869-064-00065-3)	20.00	Apr. 1, 2008
300-499	(869-064-00066-1)	33.00	Apr. 1, 2008
500-599	(869-064-00067-0)	50.00	Apr. 1, 2008
600-799	(869-064-00068-8)	20.00	Apr. 1, 2008
800-1299	(869-064-00069-6)	63.00	Apr. 1, 2008
1300-End	(869-064-00070-0)	28.00	Apr. 1, 2008
22 Parts:			
1-299	(869-064-00071-8)	66.00	Apr. 1, 2008
300-End	(869-064-00072-6)	48.00	Apr. 1, 2008
23	(869-064-00073-4)	48.00	Apr. 1, 2008
24 Parts:			
0-199	(869-064-00074-2)	63.00	Apr. 1, 2008
200-499	(869-064-00075-1)	53.00	Apr. 1, 2008
500-699	(869-064-00076-9)	33.00	Apr. 1, 2008
700-1699	(869-064-00077-7)	64.00	Apr. 1, 2008
1700-End	(869-064-00078-5)	33.00	Apr. 1, 2008
25	(869-064-00079-3)	67.00	Apr. 1, 2008
26 Parts:			
§§ 1.0-1.160	(869-064-00080-7)	52.00	Apr. 1, 2008
§§ 1.61-1.169	(869-064-00081-5)	66.00	Apr. 1, 2008
§§ 1.170-1.300	(869-064-00082-3)	63.00	Apr. 1, 2008
§§ 1.301-1.400	(869-064-00083-1)	50.00	Apr. 1, 2008
§§ 1.401-1.440	(869-064-00084-0)	59.00	Apr. 1, 2008
§§ 1.441-1.500	(869-064-00085-8)	61.00	Apr. 1, 2008
§§ 1.501-1.640	(869-064-00086-6)	52.00	Apr. 1, 2008
§§ 1.641-1.850	(869-064-00087-4)	64.00	Apr. 1, 2008
§§ 1.851-1.907	(869-064-00088-2)	64.00	Apr. 1, 2008
§§ 1.908-1.1000	(869-064-00089-1)	63.00	Apr. 1, 2008
§§ 1.1001-1.1400	(869-064-00090-4)	64.00	Apr. 1, 2008
§§ 1.1401-1.1550	(869-064-00091-2)	61.00	Apr. 1, 2008
§§ 1.1551-End	(869-064-00092-1)	53.00	Apr. 1, 2008
2-29	(869-064-00093-9)	63.00	Apr. 1, 2008
30-39	(869-064-00094-7)	44.00	Apr. 1, 2008
40-49	(869-064-00095-5)	31.00	Apr. 1, 2008
50-299	(869-064-00096-3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-064-00097-1)	64.00	Apr. 1, 2008	63 (63.1440-63.6175)	(869-064-00150-1)	35.00	July 1, 2008
500-599	(869-064-00098-0)	12.00	⁵ Apr. 1, 2008	63 (63.6580-63.8830)	(869-062-00151-7)	32.00	July 1, 2007
600-End	(869-064-00099-8)	20.00	Apr. 1, 2008	63 (63.8980-End)	(869-064-00152-8)	38.00	July 1, 2008
27 Parts:				64-71	(869-064-00153-6)	32.00	July 1, 2008
1-39	(869-064-00100-5)	35.00	Apr. 1, 2008	72-80	(869-062-00154-1)	62.00	July 1, 2007
40-399	(869-064-00101-3)	67.00	Apr. 1, 2008	81-84	(869-064-00155-2)	53.00	July 1, 2008
400-End	(869-064-00102-1)	21.00	Apr. 1, 2008	85-86 (85-86.599-99)	(869-064-00156-1)	64.00	July 1, 2008
28 Parts:				86 (86.600-1-End)	(869-064-00157-9)	53.00	July 1, 2008
0-42	(869-064-00103-0)	64.00	July 1, 2008	87-99	(869-062-00158-4)	60.00	July 1, 2007
43-End	(869-064-00104-8)	63.00	July 1, 2008	100-135	(869-064-00159-5)	48.00	July 1, 2008
29 Parts:				136-149	(869-062-00160-6)	61.00	July 1, 2007
0-99	(869-062-00105-3)	50.00	⁷ July 1, 2007	150-189	(869-062-00161-4)	50.00	July 1, 2007
100-499	(869-062-00106-1)	23.00	July 1, 2007	190-259	(869-064-00162-5)	42.00	July 1, 2008
500-899	(869-062-00107-0)	61.00	⁷ July 1, 2007	260-265	(869-064-00163-3)	53.00	July 1, 2008
900-1899	(869-064-00108-1)	39.00	July 1, 2008	266-299	(869-062-00164-9)	50.00	July 1, 2007
1900-1910 (§§ 1900 to 1910.999)	(869-062-00109-6)	61.00	July 1, 2007	300-399	(869-064-00165-0)	45.00	July 1, 2008
1910 (§§ 1910.1000 to end)	(869-062-00110-0)	46.00	July 1, 2007	400-424	(869-062-00166-5)	56.00	⁷ July 1, 2007
1911-1925	(869-062-00111-8)	30.00	July 1, 2007	425-699	(869-062-00167-3)	61.00	July 1, 2007
1926	(869-064-00112-9)	53.00	July 1, 2008	700-789	(869-062-00168-1)	61.00	July 1, 2007
1927-End	(869-062-00113-4)	62.00	July 1, 2007	790-End	(869-062-00169-0)	61.00	July 1, 2007
30 Parts:				41 Chapters:			
*1-199	(869-064-00114-5)	60.00	July 1, 2008	1, 1-1 to 1-10	13.00	³ July 1, 1984	
200-699	(869-064-00115-8)	49.00	July 1, 2008	1, 1-11 to Appendix, 2 (2 Reserved)	13.00	³ July 1, 1984	
700-End	(869-062-00116-9)	58.00	July 1, 2007	3-6	14.00	³ July 1, 1984	
31 Parts:				7	6.00	³ July 1, 1984	
*0-199	(869-064-00117-0)	44.00	July 1, 2008	8	4.50	³ July 1, 1984	
200-499	(869-064-00118-8)	49.00	July 1, 2008	9	13.00	³ July 1, 1984	
500-End	(869-064-00119-6)	65.00	July 1, 2008	10-17	9.50	³ July 1, 1984	
32 Parts:				18, Vol. I, Parts 1-5	13.00	³ July 1, 1984	
1-39, Vol. I		15.00	² July 1, 1984	18, Vol. II, Parts 6-19	13.00	³ July 1, 1984	
1-39, Vol. II		19.00	² July 1, 1984	18, Vol. III, Parts 20-52	13.00	³ July 1, 1984	
1-39, Vol. III		18.00	² July 1, 1984	19-100	13.00	³ July 1, 1984	
1-190	(869-064-00120-0)	64.00	July 1, 2008	1-100	(869-064-00170-6)	27.00	July 1, 2008
191-399	(869-064-00121-8)	66.00	July 1, 2008	101	(869-062-00171-1)	21.00	July 1, 2007
400-629	(869-064-00122-6)	53.00	July 1, 2008	102-200	(869-064-00172-2)	56.00	July 1, 2008
630-699	(869-064-00123-4)	40.00	July 1, 2008	*201-End	(869-064-00173-1)	27.00	July 1, 2008
700-799	(869-064-00124-2)	49.00	July 1, 2008	42 Parts:			
800-End	(869-064-00125-1)	50.00	July 1, 2008	1-399	(869-062-00174-6)	61.00	Oct. 1, 2007
33 Parts:				400-413	(869-062-00175-4)	32.00	Oct. 1, 2007
1-124	(869-064-00126-9)	60.00	July 1, 2008	414-429	(869-062-00176-2)	32.00	Oct. 1, 2007
125-199	(869-062-00127-4)	61.00	July 1, 2007	430-End	(869-062-00177-1)	64.00	Oct. 1, 2007
200-End	(869-062-00128-2)	57.00	July 1, 2007	43 Parts:			
34 Parts:				1-999	(869-062-00178-9)	56.00	Oct. 1, 2007
1-299	(869-064-00129-3)	53.00	July 1, 2008	1000-end	(869-062-00179-7)	62.00	Oct. 1, 2007
300-399	(869-064-00130-7)	43.00	July 1, 2008	44	(869-062-00180-1)	50.00	Oct. 1, 2007
400-End & 35	(869-062-00131-2)	61.00	July 1, 2007	45 Parts:			
36 Parts:				1-199	(869-062-00181-9)	60.00	Oct. 1, 2007
1-199	(869-062-00132-1)	37.00	July 1, 2007	200-499	(869-060-00182-7)	34.00	⁹ Oct. 1, 2007
200-299	(869-062-00133-9)	37.00	July 1, 2007	500-1199	(869-062-00183-5)	56.00	Oct. 1, 2007
300-End	(869-064-00134-0)	64.00	July 1, 2008	1200-End	(869-062-00184-3)	61.00	Oct. 1, 2007
*37	(869-064-00135-8)	61.00	July 1, 2008	46 Parts:			
38 Parts:				1-40	(869-062-00185-1)	46.00	Oct. 1, 2007
0-17	(869-062-00136-3)	60.00	July 1, 2007	41-69	(869-062-00186-0)	39.00	Oct. 1, 2007
18-End	(869-062-00137-1)	62.00	July 1, 2007	70-89	(869-062-00187-8)	14.00	Oct. 1, 2007
39	(869-064-00138-2)	45.00	July 1, 2008	90-139	(869-062-00188-6)	44.00	Oct. 1, 2007
40 Parts:				140-155	(869-062-00189-4)	25.00	Oct. 1, 2007
1-49	(869-062-00139-8)	60.00	July 1, 2007	156-165	(869-062-00190-8)	34.00	Oct. 1, 2007
50-51	(869-064-00140-4)	48.00	July 1, 2008	166-199	(869-062-00191-6)	46.00	Oct. 1, 2007
52 (52.01-52.1018)	(869-064-00141-2)	61.00	July 1, 2008	200-499	(869-062-00192-4)	40.00	Oct. 1, 2007
*52 (52.1019-End)	(869-064-00142-1)	67.00	July 1, 2008	500-End	(869-062-00193-2)	25.00	Oct. 1, 2007
53-59	(869-064-00143-9)	34.00	July 1, 2008	47 Parts:			
60 (60.1-End)	(869-062-00144-4)	58.00	July 1, 2007	0-19	(869-062-00194-1)	61.00	Oct. 1, 2007
60 (Apps)	(869-062-00145-2)	57.00	July 1, 2007	20-39	(869-062-00195-9)	46.00	Oct. 1, 2007
61-62	(869-064-00146-3)	48.00	July 1, 2008	40-69	(869-062-00196-7)	40.00	Oct. 1, 2007
63 (63.1-63.599)	(869-064-00147-1)	61.00	July 1, 2008	70-79	(869-062-00197-5)	61.00	Oct. 1, 2007
63 (63.600-63.1199)	(869-062-00148-7)	50.00	July 1, 2007	80-End	(869-062-00198-3)	61.00	Oct. 1, 2007
63 (63.1200-63.1439)	(869-064-00149-8)	53.00	July 1, 2008	48 Chapters:			
				1 (Parts 1-51)	(869-062-00199-1)	63.00	Oct. 1, 2007
				1 (Parts 52-99)	(869-062-00200-9)	49.00	Oct. 1, 2007
				2 (Parts 201-299)	(869-062-00201-7)	50.00	Oct. 1, 2007
				3-6	(869-062-00202-5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7-14	(869-062-00203-3)	56.00	Oct. 1, 2007
15-28	(869-062-00204-1)	47.00	Oct. 1, 2007
29-End	(869-062-00205-0)	47.00	Oct. 1, 2007
49 Parts:			
1-99	(869-062-00206-8)	60.00	Oct. 1, 2007
100-185	(869-062-00207-6)	63.00	Oct. 1, 2007
186-199	(869-062-00208-4)	23.00	Oct. 1, 2007
200-299	(869-062-00208-1)	32.00	Oct. 1, 2007
300-399	(869-062-00210-6)	32.00	Oct. 1, 2007
400-599	(869-062-00210-3)	64.00	Oct. 1, 2007
600-999	(869-062-00212-2)	19.00	Oct. 1, 2007
1000-1199	(869-062-00213-1)	28.00	Oct. 1, 2007
1200-End	(869-062-00214-9)	34.00	Oct. 1, 2007
50 Parts:			
1-16	(869-062-00215-7)	11.00	Oct. 1, 2007
17.1-17.95(b)	(869-062-00216-5)	32.00	Oct. 1, 2007
17.95(c)-end	(869-062-00217-3)	32.00	Oct. 1, 2007
17.96-17.99(h)	(869-062-00218-1)	61.00	Oct. 1, 2007
17.99(i)-end and 17.100-end	(869-062-00219-0)	47.00	⁸ Oct. 1, 2007
18-199	(869-062-00226-3)	50.00	Oct. 1, 2007
200-599	(869-062-00221-1)	45.00	Oct. 1, 2007
600-659	(869-062-00222-0)	31.00	Oct. 1, 2007
660-End	(869-062-00223-8)	31.00	Oct. 1, 2007
CFR Index and Findings			
Aids	(869-064-00050-5)	65.00	Jan. 1, 2008
Complete 2008 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
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Complete set (one-time mailing)		332.00	2006

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

⁸ No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.