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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AMS–FV–08–0008, FV08–927–610 Review]

Pears Grown in Oregon and Washington; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 927, regulating the handling of pears grown in Oregon and Washington. AMS has determined that the marketing order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* A copy of the review may also be obtained via the Internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or E-mail: *Sue.Coleman@usda.gov* or *GaryD.Olson@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 927, as amended (7 CFR part 927), regulates the handling of pears grown in Oregon and Washington State, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The order establishes two administrative committees, the Fresh Pear Committee and the Processed Pear Committee (Committees).

The Fresh Pear Committee (FPC) is comprised of 13 members and 26 first and second alternate members selected by the Department of Agriculture (USDA). Six of the members and their respective alternates are growers of fresh pears, six of the members and their respective alternates are handlers, and one member and the respective alternates represent the public.

The Processed Pear Committee (PPC) is comprised of 10 members and 20 first and second alternate members selected by the USDA. Three of the members and their respective alternates are growers of pears for processing, three of the members and their respective alternates are handlers, three of the members and their respective alternates are processors, and one member and the respective alternates represent the public.

For both Committees, members and alternate members serve for two years beginning on July 1 and ending on June 30. The terms are staggered so that half of the members are selected annually. Committee members may serve for a maximum of three consecutive two-year terms.

The Committees are responsible for local administration of the order, including recommending the implementation of regulatory actions and activities to USDA, collecting and distributing industry statistics, and ensuring compliance with the various provisions of the order. The Committees recommend amendments to the order when needed to further industry objectives. Activities of the Committees are funded by assessments collected from handlers. USDA must approve recommendations by the Committees before they can be implemented.

Currently, there are approximately 1,700 growers and 42 handlers of Oregon-Washington pears in the regulated production area. The majority of these growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all industry entities regardless of size, and do not have differential impacts based on size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 927, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the Oregon-Washington pear marketing order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. Three comments were received on the regulations.gov website in support of the order and are discussed later in this confirmation.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes grade, size, quality, and container regulations for fresh pears, excluding pears for processing. Also authorized for fresh pears are mandatory inspection requirements. Only one minimum quality handling regulation is currently in effect, which covers fresh shipments to North America for the Beurre D'Anjou variety. This regulation has helped ensure that only high quality Beurre D'Anjou pears reach consumers, contributing to increasing and maintaining demand. The order also authorizes production and post-harvest

research, marketing research, market development, and promotion activities, including paid advertising. The research and promotion programs are all currently active. Finally, the order authorizes collection and dissemination of information for the benefit of the industry. Funds to administer the order are obtained from assessments levied against all product handled under the order.

This order has a history of regulations that includes minimum grade and size, and mandatory inspection. Current industry practices have moved beyond the need for these regulations. However, the order contains the authority for these provisions should they ever be necessary to enforce again.

Regarding complaints or comments received from the public concerning the order, AMS received three comments, one from a pear handler, one from the FPC, and one from the PPC. All comments were supportive of the order and addressed each of the five factors under consideration by AMS. Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committees and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in August 1939 to regulate the winter pear varieties. During the 69 years the order has been in effect, AMS and the Oregon-Washington pear industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committees meet once or twice a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

In 1961, the order was redesignated from 7 CFR 939 to 7 CFR 927. In 1986, the title of the order was simplified, by changing it from ''Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in the States of Oregon, Washington, and California'' to ''Winter Pears Grown in Oregon, Washington, and California''. This action allowed more varieties to be included under the order.

Additional order improvements have included a redefinition of the production area and a consolidation of orders. In 1997, California growers and handlers were removed from the order and agreement at their request since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. The most recent major amendments occurred in 2005 to consolidate the order with Marketing Order No. 931, Fresh Bartlett Pears Grown in Oregon and Washington. The title changed again, becoming ''Pears Grown in Oregon and Washington.''

Based on the potential benefits of the order to growers, handlers, processors, and consumers, AMS has determined that the Oregon-Washington pear marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The collection, compilation, and dissemination of information has provided growers, handlers, and processors with tools to assist them in making production and marketing decisions.

Numerous activities and projects undertaken by the Committees have allowed growers to earn higher revenues and reduce the cost of production. The minimum quality regulation of fresh Beurre D'Anjou pear shipments has benefited growers, handlers, and most importantly, consumers. AMS will continue to work with the Oregon-Washington pear industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30310 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS–FV–08–0009; FV08–966–610 Review]

Tomatoes Grown in Florida; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 966, regulating the handling of tomatoes grown in Florida (order). AMS has determined that the order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. A copy of the review may also be obtained via the Internet at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental or Christian D. Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Winter Haven, Florida 33884; Telephone: (863) 324–3375; Fax: (863) 325–8793; or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Order No. 966, as amended (7 CFR part 966), regulates the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The order establishes the Florida Tomato Committee (Committee) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 12 grower members representing four districts. Each member has an alternate. Members and alternate members are elected through nomination meetings held in each district.

Currently, there are approximately 100 producers and approximately 70 handlers of Florida tomatoes. The majority of growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 966, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. While no comments were received in response to the notice, AMS had also published a notice of review in the June 24, 2002, issue of the **Federal Register** (67 FR 42530), as part of a previous schedule, and one written comment in support of the order was received. The comment is referenced in the AMS analysis below.

The review was undertaken to determine whether the order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes grade, size, quality, maturity, and pack and container regulations, as well as research and promotion, and reporting and inspection requirements. The order also authorizes the Committee to establish marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. Finally, the order authorizes the collection and dissemination of information for the benefit of the industry. The grade, size, maturity, and inspection regulations are also applied to imported tomatoes under section 608e of the Act.

The grade, size, and maturity requirements have helped maintain demand for Florida tomatoes over the years by ensuring only quality product reaches the consumer. The compilation and dissemination of aggregate statistical information collection from handlers is used by the industry to make informed production and marketing decisions. Funds to administer the order are obtained from handler assessments.

Regarding complaints or comments received from the public concerning the order, USDA received no comments as a result of the notice of review published on March 18, 2008. However, one comment was received from the then chairperson of the Committee in response to a separate notice of review published in the **Federal Register** on June 24, 2002 (67 FR 42530). In the comment, the commenter noted that the order has contributed significantly to the success of the Florida tomato industry. He attributes dramatically increased yields to research authorized under the order, while crediting the marketing aspects of the order with contributing to the increase in consumption of fresh tomatoes. He also states that the most important aspect of the order has been its stabilizing effect on fresh tomato markets. The commenter believes the order has been a success in meeting the terms of the Act, and expressed his strongest support for its continuation.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the order.

The order was established in 1955 and was last amended in July 1986. During the 53 years the order has been effective, AMS and the Florida tomato industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration.

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Florida tomato marketing order should be continued. The order was established to help the industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, maturity, and pack, as well as research and promotion, and reporting requirements continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the Florida tomatoes industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30311 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS–FV–08–0010; FV08–984–610 Review]

Walnuts Grown in California; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 984, regulating the handling of walnuts grown in California (order). AMS has determined that the order should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* A copy of the review may also be obtained via the Internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel or Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, #102–B, Fresno, CA 93721; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: *Kurt.Kimmel@USDA.gov* or *Martin.Engeler@USDA.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 984, as amended (7 CFR part 984), regulates the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The order establishes the California Walnut Board (Board) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Board consists of 10 members. Five of the members are growers of walnuts, four are handlers, and one member is a non-industry member. Each member has an alternate. Board members and alternates are nominated by the industry and selected by the Department of Agriculture (USDA).

Currently, there are approximately 4,000 producers and approximately 58 handlers of California walnuts. The majority of growers and handlers may be classified as small entities. The regulations implemented under the order are applied uniformly and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations, including Marketing Order No. 984, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the California walnut marketing order in the March 18, 2008, issue of the **Federal Register** (73 FR 14400). The deadline for comments ended May 19, 2008. No comments were received in response to the notice.

The review was undertaken to determine whether the California walnut marketing order should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the order; (2) the nature of complaints or comments received from the public concerning the order; (3) the complexity of the order; (4) the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

The order authorizes quality regulations including minimum grades and sizes for shelled and inshell walnuts, with mandatory inspection to ensure these requirements are met. The order also authorizes production research and marketing research, and marketing promotion (including paid advertising) activities, as well as collection and dissemination of information. Finally, the order authorizes the use of volume control to manage excess supplies in years of oversupply, but this feature has not been used since the 1980s. The grade and size regulations and inspection requirements are also applied to imported walnuts under section 608e of the Act.

The grade and size requirements have helped ensure that good quality product reaches the consumer, thus contributing to consumer confidence. The marketing promotion activities have helped to build consumer awareness of the product and to increase and maintain demand over the years. Production research projects have enabled the industry to address production-related issues, resulting in improved techniques and more efficient operations. The compilation and dissemination of aggregate industry statistical information is a valuable tool used by producers and handlers to assist them in their harvesting, marketing, and sales decisions. In the past, the volume control provisions of the order have helped the industry manage excess supplies, but their use has not been necessary in recent years as supply is more in line with demand. Funds to administer the order are obtained from handler assessments.

Regarding complaints or comments received from the public concerning the order, AMS received no comments in response to the Notice of Review.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and the AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for California walnuts. There is, however, a state program that provides related services to the California walnut industry. The California Walnut Commission (Commission) works cooperatively with the Federal order to ensure there is no duplication of effort. The Commission is primarily responsible for international promotion activities. This complements the activities of the Federal order pertaining to domestic promotion activities. The programs share staff and office space, and several of the Federal marketing order Board members are also members of the state Commission. This arrangement helps assure that the programs complement each other rather than conflict, duplicate, or overlap. Both programs operate in concert with each other to benefit the California walnut industry.

The order was established in 1948 and was last amended in April, 2008. During the 60 years the order has been in effect, AMS and the California walnut industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Board meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In addition, the order has been amended seven times since its inception. Different authorities have been added to the order, and numerous changes to existing authorities under the order have been made to reflect the evolving needs of the industry.

Based on the potential benefits of the order to producers, handlers, and

consumers, AMS has determined that the California walnut marketing order should be continued. The order was established to help the California walnut industry work with USDA to solve marketing problems. The order's regulations on grade and size, as well as research and promotion, and collection and dissemination of information continue to be beneficial to producers, handlers, and consumers.

AMS will continue to work with the California walnut industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30309 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2008–0024]

RIN 1557–AD19

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1342]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD39

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS–2008–0021]

RIN 1550–AC29

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, the ''agencies'') are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: *OCC:* Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898–6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2008 (72 FR 72571 (Dec. 21, 2007)). The CRA regulations, as revised on December 21, 2007, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion are ''small banks'' or ''small savings associations.'' Small banks and small savings associations with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years are ''intermediate small banks'' or ''intermediate small savings associations.'' 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2008, the CPIW increased by 4.49 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2009, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion are ''small banks'' or ''small savings associations.'' Small banks or small savings associations with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years are ''intermediate small banks'' or ''intermediate small savings associations.'' The agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/*.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the CRA regulations that the agencies previously published for

comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) are amended by adjusting the asset threshold as provided for in §§ 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

Accordingly, since the agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2009. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the requirements of the CRA rules, the agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

There are no collection of information requirements in this joint final rule.

Executive Order 12866

The OCC and OTS have each determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the agencies have determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Executive Order 13132

The OCC and OTS have each determined that its portion of this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

■ For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion. Intermediate small bank means a small bank with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion. Intermediate small bank means a small bank with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion. Intermediate small bank means a small bank with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years.

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.12(u)(1) to read as follows:

§ 563e.12 Definitions.

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(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.109 billion. *Intermediate small savings association* means a small savings association with assets of at least $277 million as of December 31 of both of the prior two calendar years and less than $1.109 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 16, 2008.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System.

Dated: December 16, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of December, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 11, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–30433 Filed 12–19–08; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD35

Risk Based Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending our regulations to increase risk-based assessment rates effective for the first quarter 2009 assessment period. This is in accordance with the Restoration plan for the DIF published on October 16, 2008, in the **Federal Register**.

DATES: The final rule will become effective on January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Matthew Green, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–3670; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background: Restoration Plan and Proposed Rule

Recent failures of FDIC-insured institutions caused the reserve ratio of the Deposit Insurance Fund (DIF) to decline from 1.19 percent as of March 30, 2008, to 1.01 percent as of June 30 and 0.76 percent as of September 30. The FDIC expects a higher rate of institution failures in the next few years compared to recent years, leading to a further decline in the reserve ratio. Because the fund reserve ratio fell below 1.15 percent as of June 30 and was expected to remain below 1.15 percent, the Reform Act required the FDIC to establish and implement a Restoration Plan to restore the reserve ratio to at least 1.15 percent within five years.

On October 7, 2008, the FDIC established a Restoration Plan for the DIF, published on October 16 (see 73 FR 61598). In the FDIC's view, restoring the reserve ratio to at least 1.15 percent within five years requires an increase in assessment rates. Since the current rates are already three basis points above the existing base rate schedule, a new rulemaking was required. Consequently, the FDIC Board of Directors adopted, also on October 7, 2008, a notice of proposed rulemaking with request for comments on revisions to the FDIC's assessment regulations (12 CFR part 327).[1] The rulemaking proposed that, effective January 1, 2009, current assessment rates would increase uniformly by 7 basis points for the first quarter 2009 assessment period. Effective April 1, 2009, the rulemaking proposed to alter the way in which the FDIC's risk-based assessment system differentiates for risk and set new deposit insurance assessment rates. Also effective on April 1, 2009, the proposal would make technical and other changes to the rules governing the risk-based assessment system. The proposed rule was published concurrently with the Restoration Plan on October 16, 2008 (see 73 FR 61560), with a comment period scheduled to end on November 17, 2008.

On November 7, 2008, the FDIC Board approved an extension of the comment period until December 17, 2008, on the parts of the proposed rulemaking that would become effective on April 1, 2009. The comment period for the proposed 7 basis point rate increase for the first quarter of 2009, with its separate proposed effective date of January 1, 2009, was not extended and expired on November 17, 2008.

This final rule will implement a uniform increase to current rates for the first quarter 2009 assessment period only. The FDIC will issue another final rule early in 2009, to be effective April 1, 2009, to change the way that the FDIC's assessment system differentiates for risk, to set new assessment rates beginning with the second quarter of 2009, and make certain technical and other changes to the assessment rules.

II. The Final Rule: Assessment Rate Schedule for the First Quarter of 2009

The final rule raises the current rates uniformly by 7 basis points for the quarterly assessment period beginning January 1, 2009 only. The higher assessments would be reflected in the fund balance as of March 31, 2009, and collected on June 30, 2009. Rates for the first quarter of 2009 are shown in Table 1 as follows:

[1] At the same meeting, the Board set the Designated Reserve Ratio of the DIF at 1.25 percent for 2009.

TABLE 1—ASSESSMENT RATES FOR THE FIRST QUARTER OF 2009

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	14	17	35	50

* Rates for institutions that do not pay the minimum or maximum rate would vary between these rates.

III. Factors Considered in Setting First Quarter 2009 Assessment Rates

Summary

The FDIC expects that the economic downturn and continuing troubles in the housing and construction sectors, financial markets, and commercial real estate will prolong the challenging operating environment that banks and thrifts face. Losses experienced by many large institutions in recent quarters are likely to spread to a growing number of small institutions. The percentage of the industry that is unprofitable is expected to remain high, primarily due to asset quality problems. These troubles lead the FDIC to project an increase in failures and higher losses to the insurance fund compared to recent years. The insurance fund balance and reserve ratio are likely to decline further before increased assessment revenue can begin to offset the effects of higher losses.

Since the October proposed rulemaking, the FDIC has updated its projections through the first quarter of 2009 of losses and other factors affecting the reserve ratio. The FDIC bases its updated near-term loss projections on analysis of specific troubled institutions, analysis of recent and expected loss rates given failure, as well as the stress analyses of the effects of housing price declines and an economic slowdown underlying the projections included in the October proposed rulemaking.

The FDIC also assumes that insured deposits would increase at an annual rate between 5 and 6 percent through March of next year. (Insured deposits include only those under the basic limit of $100,000 and $250,000 for retirement accounts.) [2] For the four quarters ending September 30, 2008, insured deposits rose 7.1 percent. Over the 5-year period ending in September, insured deposits rose at an average annual rate of 5.9 percent.

Table 2 shows projected reserve ratios for the fourth quarter of 2008 and first quarter of 2009 for alternative insured deposit growth assumptions. At 5 or 6 percent insured deposit growth, the reserve ratio would fall from 0.76 percent in the third quarter of 2008 to 0.61 percent at the end of the year. It would rise slightly to 0.63 percent (assuming 5 percent insured deposit growth) or 0.62 percent (with 6 percent growth) in the first quarter of 2009 due to the increase in assessment rates adopted in the final rule. In the absence of the rate increase, the reserve ratio would end the first quarter at 0.60 percent (with 5 or 6 percent insured deposit growth).

TABLE 2—PROJECTED RESERVE RATIOS

[September 30, 2008 reserve ratio = 0.76 percent]

Quarter ending	Annualized insured deposit growth*			
	4%	5%	6%	7%
12/31/2008	0.61%	0.61%	0.61%	0.60%
3/31/2009 (without rate increase)	0.60%	0.60%	0.60%	0.59%
3/31/2009 (with 7 b.p. rate increase)	0.63%	0.63%	0.62%	0.62%

* Assumes assessable (domestic) and insured deposits increase at the same rate. Estimated insured deposits do not include those resulting from the temporary coverage limit increase to $250,000 under the Emergency Economic Stabilization Act of 2008, or those non-interest bearing transaction deposits covered by the Temporary Liquidity Guarantee Program.

The rates adopted in the final rule for the first quarter of 2009 will raise almost as much assessment revenue as the rates that would become effective beginning April 1, 2009 under the October proposed rulemaking. Combining the updated near-term projections above with the longer-term projections included in the October proposed rulemaking and the proposed assessment rates effective April 1, the FDIC expects that the reserve ratio will reach 0.69 percent by the end of 2009. By the end of 2013—the last year of the Restoration Plan—the reserve ratio is projected to reach 1.21 percent, allowing for a margin for error in achieving the 1.15 percent threshold if the FDIC's assumptions do not hold.[3] However, the FDIC will update its longer-term projections for the insurance fund before adopting a final rule on assessment rates and risk-based pricing changes that would take effect in the second quarter of next year.

The FDIC recognizes that there is considerable uncertainty about its projections for losses and insured deposit growth, and that changes in assumptions about these and other factors could lead to different assessment revenue needs and rates. Under the terms of the Restoration Plan, the FDIC must update its projections for the insurance fund balance and reserve ratio at least semiannually while the plan is in effect and adjust rates as necessary. In the event that losses

[2] Estimated insured deposits do not include those resulting from the temporary coverage limit increase to $250,000 under the Emergency Economic Stabilization Act of 2008, or those non-interest bearing transaction deposits covered by the Temporary Liquidity Guarantee Program.

[3] In the October proposed rulemaking, the FDIC's best estimate of the cost of failures over the six years from 2008 through 2013 was about $40 billion and its projected 2013 ending reserve ratio was 1.26 percent. Combining updated near-term loss estimates with the longer term forecasts from October, total failures costs for 2008–13 are now projected to exceed $42 billion, contributing to a lower projected reserve ratio for 2013.

exceed the FDIC's best estimate or insured deposit growth is more rapid than expected, the Board will be able to adjust assessment rates.

Analysis

In setting assessment rates, the FDIC's Board of Directors has considered the following factors as required by statute:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) under the risk-based assessment system, including the requirement under section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) to maintain a risk-based system.

(v) Other factors the Board of Directors has determined to be appropriate.[4]

The factors considered in setting assessment rates are discussed in more detail below.

Case Resolution Expenses (Insurance Fund Losses)

A higher rate of failures is likely to cause the insurance fund balance and reserve ratio to decline at least through the end of 2008 before increased assessment revenue can begin to offset the effects of increased losses. The economic downturn and continuing troubles in the housing and construction sectors, financial markets, and commercial real estate will prolong the challenging operating environment that banks and thrifts face going into 2009. Losses experienced by many large institutions in recent quarters are likely to spread to a growing number of small institutions. The percentage of the industry that is unprofitable is expected to remain high, primarily due to asset quality problems.

The FDIC's updated near-term projections relied heavily on supervisory analysis of specific troubled institutions. Recent and expected loss rates given failure and stress analyses of the effects of housing price declines and an economic slowdown in specific geographic areas on loan losses and bank capital also served as a basis for insurance fund loss projections.

The FDIC estimates that failures in all of 2008 will cost the insurance fund $18.9 billion. After taking into account a projected year-end 2008 contingent loss reserve for anticipated failures, insurance fund loss provisions for 2008 are currently projected to total $30.4 billion.[5] For the fourth quarter, failures are expected to cost $4.8 billion and loss provisions are estimated at $7.7 billion.[6] The fund is also projected to incur another $1.1 billion in loss provisions during the first quarter of next year.

Before considering the final rule on changes to risk-based pricing rules and assessment rates beginning the second quarter of 2009, the FDIC will update its long-term stress analyses and other factors and assumptions underlying its projections of losses in 2009 and over the five-year Restoration Plan horizon.

Operating Expenses and Investment Income

Operating expenses are projected to average close to $300 million per quarter in the fourth quarter of 2008 and first quarter of 2009.

The FDIC projects that its investment contributions (investment income and realized gains on the sale of securities, plus or minus unrealized gains or losses on available-for-sale securities) will average $309 million per quarter in the fourth quarter of this year and first quarter of next year. The FDIC is investing new funds in overnight investments and short-term Treasury bills to accommodate increased bank failure activity. The FDIC generally expects that these investments will earn lower rates than the longer-term securities that they are replacing, particularly given the consensus forecast of a near-term decline in Treasury rates, and will therefore result in less interest income to the fund.[7]

Assessment Revenue, Credit Use, and the Distribution of Assessments

The FDIC expects that assessment revenue in 2008 will total about $3.0 billion: $4.4 billion in gross assessments charged less $1.4 billion in credits used. Fourth quarter revenue is projected at about $1.0 billion. By the end of 2008, the projections indicate that only 4 percent of the original $4.7 billion in credits awarded will be remaining. Under the statutory provisions governing the Restoration Plan, the FDIC has the authority to restrict credit use while the plan is in effect, providing that institutions may still apply credits against their assessments equal to the lesser of their assessment or 3 basis points.[8] The FDIC concluded not to restrict credit use in the Restoration Plan. The FDIC projects that the amount of credits remaining at the time that the proposed new rates go into effect will be very small and that their continued use would have very little effect on the assessment rates necessary to meet the requirements of the plan.[9]

The FDIC projects that the 7 basis point uniform increase in rates adopted in the final rule for the first quarter of 2009 will result in first quarter assessment revenue of just over $2.3 billion, about $1.2 billion more than in the absence of a rate increase. The FDIC derived its assessment revenue projections by assigning each insured institution to an assessment rate based on the current rate schedule for the fourth quarter and the rate schedule adopted in the final rule for the first quarter of next year. It then adjusted each institution's assessment for any remaining credits. For the fourth quarter of 2008, the FDIC estimated an industry average rate of approximately 6.4 basis points, increasing to approximately 13.4 basis points in the first quarter of 2009.

Estimated Insured Deposits

The FDIC believes that it is reasonable to plan for annual insured deposit growth of between 5 and 6 percent through the first quarter of next year. Over the 12 months ending September 30, 2008, estimated insured deposits

[4] Section 2104 of the Reform Act (amending section 7(b)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(B)). The risk factors referred to in factor (iv) include:

(i) The probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) Different categories and concentrations of assets;

(II) Different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) Any other factors the Corporation determines are relevant to assessing such probability;

(ii) The likely amount of any such loss; and

(iii) The revenue needs of the Deposit Insurance Fund.

Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)).

[5] The $30.4 billion 2008 loss provision is derived by adding $18.9 billion for the cost of failures, $11.5 billion for the contingent loss reserve, and another $0.1 billion adjustment for failures in earlier years, then subtracting the $0.1 billion year-end 2007 contingent loss reserve.

[6] The $7.7 billion fourth quarter loss provision is derived by adding $4.8 billion for the cost of failures, $11.5 billion for the contingent loss reserve, and another $3.1 billion adjustment for failures occurring prior to the fourth quarter, then subtracting the $11.7 billion third quarter contingent loss reserve.

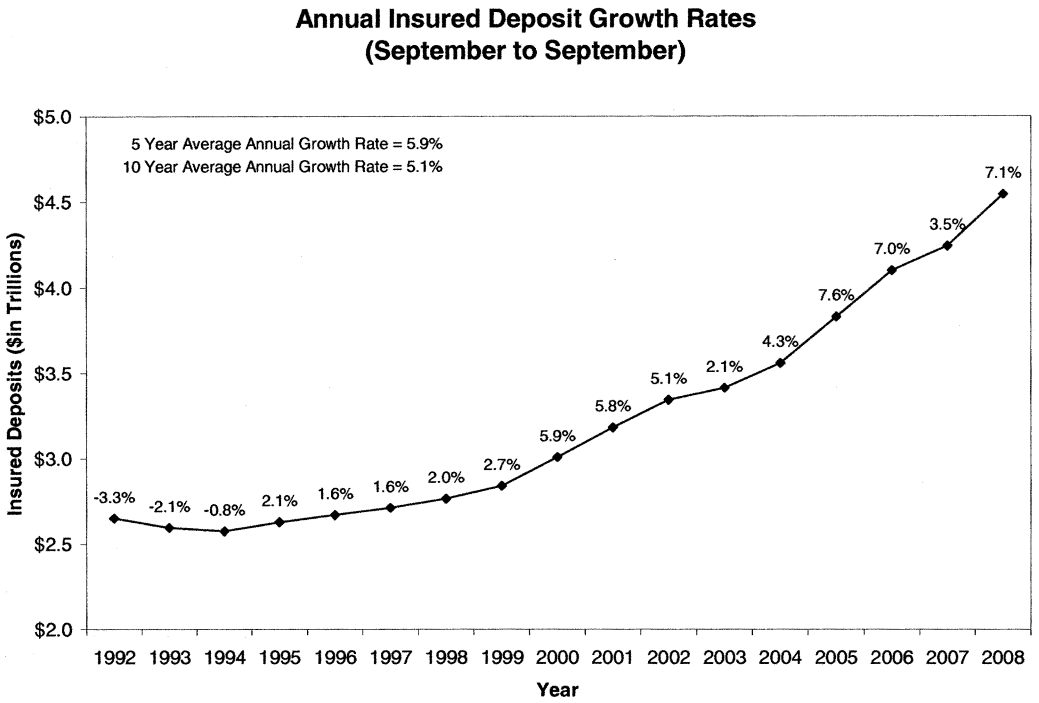
[7] Projections of interest rates are based on consideration of December Blue Chip Financial Forecasts.

[8] Section 7(b)(3)(E)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(iv)).

[9] For 2008, 2009 and 2010, credits may not offset more than 90 percent of an institution's assessment. Section 7(e)(3)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)(3)(D)(ii)).

increased by 7.1 percent.[10] However, the most recent 5- and 10-year averages are about 6 percent and 5 percent, respectively. Chart 1 depicts insured deposit growth rates since 1992.

Chart 1



Projections of insured deposits are subject to considerable uncertainty. Insured deposit growth over the near term could continue to rise at the more rapid pace observed in the third quarter (1.8 percent, or 7.2 percent annualized) due to a ''flight to quality'' attributable to financial and economic uncertainties. On the other hand, as the experience of the late 1980s and early 1990s demonstrated, lower overall growth in the banking industry and the economy could depress rates of growth of total domestic and insured deposits. As Table 2 shows, differences in annualized growth rates of insured deposits over the next couple of quarters will have little effect on the projected reserve ratio as of March 31, 2009.

Projected Fund Balances, Insured Deposits, and Reserve Ratios

Assuming annualized insured deposit growth of 5 percent through March of next year, projections of fund income, expenses, and losses, the fund balance, estimated insured deposits, and the reserve ratio are shown below in Table 3.

TABLE 3—PROJECTED FUND BALANCE, ESTIMATED INSURED DEPOSITS, AND RESERVE RATIO UNDER THE RATES ADOPTED IN THE FINAL RULE ASSUMING 5 PERCENT ANNUAL INSURED DEPOSIT GROWTH

[$ in billions]

	4th Qtr 2008	1st Qtr 2009
Beginning Fund Balance	34.6	28.0
Plus: Net Assessment Revenue	1.0	2.3
Plus: Investment Income	0.3	0.3
Less: Loss Provisions	7.7	1.1
Less: Operating Expenses	0.3	0.3
Ending Fund Balance	28.0	29.1
Estimated Insured Deposits	4,599.5	4,656.0
Ending Reserve Ratio	0.61%	0.63%

Note: Components of fund balance changes may not sum to totals due to rounding.

[10] Estimated insured deposits do not include those resulting from the temporary coverage limit increase to $250,000 under the Emergency Economic Stabilization Act of 2008, or those non-interest bearing transaction deposits covered by the Temporary Liquidity Guarantee Program.

Effect on Capital and Earnings

Appendix 1 contains an analysis of the effect of proposed rates on the capital and earnings of insured institutions. Given the assumptions in the analysis, for the industry as a whole, projected total assessments in the first quarter of 2009 would result in capital that would be 0.12 percent lower than if the FDIC did not charge assessments and 0.04 percent lower than if current assessment rates remained in effect. The proposed assessments would cause 3 institutions whose equity-to-assets ratio would have exceeded 4 percent in the absence of assessments to fall below that percentage and 2 institutions to fall below 2 percent. The proposed *increase* in assessments would cause 1 institution whose equity-to-assets ratio would have exceeded 4 percent under current assessments to fall below that threshold and no institutions to fall below 2 percent equity-to-assets.

For profitable institutions, assessments in the first quarter of 2009 would result in pre-tax income that would be 5.9 percent lower than if the FDIC did not charge assessments and 3.4 percent lower than if current assessment rates remained in effect. For unprofitable institutions, assessments would result in pre-tax losses that would be 4.4 percent higher than if the FDIC did not charge assessments and 2 percent higher than if current assessment rates remained in effect.

IV. Comments Received on the Proposal

The FDIC received comments from three nationwide industry trade groups and a few banks that specifically addressed the 7 basis point increase in assessment rates for the first quarter of 2009. The FDIC also received many comments from banks and others concerning rates for all of 2009 and beyond. Several of them also discussed proposed changes to risk-based pricing methods beginning in the second quarter of 2009.

One of the nationwide industry trade groups criticized the magnitude of the first quarter increase and expressed concern about the pace at which the FDIC would restore the insurance fund. It argued that the proposed assessment rates are too high—especially in the early stages of the Restoration Plan—and questioned why the FDIC does not take advantage of the flexibility that Congress provided to extend the restoration period beyond five years under ''extraordinary circumstances.'' The trade group argued that the FDIC's invocation of its systemic risk authority to provide additional guarantees on non-interest bearing transaction deposits and senior unsecured debt is evidence of ''extraordinary circumstances.'' The group believes that high premiums would restrain credit and run counter to other government efforts designed to stimulate lending. It urged the FDIC to implement a longer recapitalization period, such as six or seven years, and to rely on lower insured deposit growth assumptions to achieve a more moderate increase in rates. The comment letter recommended that the FDIC consider phasing in higher assessment rates and argued that it was counter-intuitive for the proposed minimum rate in the first quarter (12 basis points) to be higher than the proposed minimum rate in the second quarter (10 basis points initially and as low as 8 basis points after adjustments).

Another nationwide industry trade group commenting on the first quarter 2009 rate increase urged the FDIC to adopt a more modest increase in assessment rates and to use its ''extraordinary circumstances'' authority to extend the restoration period to at least seven years. The comment expressed the view that a smaller rate increase would keep additional funds in local communities for lending to small businesses and consumers during the current period of economic stress.

A third nationwide industry trade group estimated that the proposed 7 basis point assessment rate increase would reduce the banking industry's pre-tax income by 7 percent or more at a time when the industry needs to build its capital. It requested that the FDIC and other bank regulators take steps to reduce losses to the DIF from insured institution failures. To the extent that such efforts to reduce losses succeeded, the FDIC should develop a revised plan incorporating lower assessment rates.

One bank specifically discussing the first quarter 2009 proposed assessment rates described the measure as ''ill-timed,'' given current pressures on banks' capital and profitability, and urged the FDIC to implement a more modest increase. Another expressed concern that the increase would make it more difficult for safe and well-managed institutions to meet local credit needs.

As noted before, many comments received from banks and others pertained to the proposed increase in rates for all of 2009 and beyond (as well as proposed changes to risk-based pricing methods). Two comment letters supported the proposed changes to the assessment system, including the increase in premiums. Many commenters made similar points to those of the three industry trade groups. Several comments from banks and from state trade groups opposed any significant increase in assessment rates in the short term because many institutions are struggling to maintain adequate levels of capital and profitability. Several commenters urged the FDIC to withdraw the proposed rule and delay increasing assessment rates and overhauling the assessment system until the end of 2009. They argued that the delay would allow time for a thorough evaluation of the effectiveness of measures recently taken by the Federal government to restore stability to the banking system. One comment asserted that the proposed Restoration Plan penalizes safe and well-run community banks and urged the FDIC to require the largest banks to recapitalize the DIF. Finally, several comments urged the FDIC to invoke its ''extraordinary circumstances'' authority to extend the time period to rebuild the DIF from five to at least ten years. By lengthening the restoration period, the FDIC could keep assessments at a more moderate level, thereby reducing the burden on institutions during stressful periods.

The FDIC agrees with comments that significant increases in deposit insurance premium rates in times of economic and financial stress are not desirable. Indeed, the FDIC sought for several years legislative reforms that would allow it to charge every insured institution a risk-based premium regardless of the level of the reserve ratio, and to have the ability to let the fund rise under good economic conditions in order to have room to decline under adverse conditions without needing to sharply increase premium rates. The reforms sought by the FDIC became law in February 2006, and most of the implementing regulations became effective at the start of 2007. However, the one-time assessment credits granted to over 80 percent of the industry did not enable the fund to earn significant new revenue last year, resulting in only a 1 basis point increase in the reserve ratio during all of 2007. Thus, the insurance fund was unable to increase sufficiently to prevent the increase in failures this year from causing the reserve ratio to fall below the 1.15 percent lower bound established by Congress. While Congress gave the FDIC new flexibility to manage the fund, it prescribed limits on how much the reserve ratio could decline, requiring the FDIC to implement a Restoration Plan to increase the fund to at least 1.15 percent generally within five years. In the FDIC's view, higher premiums are necessary to meet this statutory requirement.

As the trade groups and many other commenters noted, the law does allow

FDIC to take longer than five years for the reserve ratio to reach 1.15 percent FDIC due to ''extraordinary circumstances.'' The FDIC recognizes the current severe strains on banks and the financial system. The FDIC's Temporary Liquidity Guarantee Program (TLGP) is part of a coordinated effort by the government—including the Treasury Department's Troubled Assets Relief Program (TARP) and the Federal Reserve's Commercial Paper Funding Facility—to stabilize the financial system and provide much needed liquidity. However, in the FDIC's view, it would be premature to conclude at this time that extraordinary circumstances should warrant extending the Restoration Plan horizon beyond five years. There is considerable uncertainty about future insurance fund losses and insured deposit growth. Under the Restoration Plan published in October, the FDIC will update its projections at least semiannually while the plan is in effect and adjust rates as necessary. As the FDIC updates its projections to account for changing conditions, it could also determine whether it is appropriate to adjust the time frame for reaching the 1.15 percent target due to extraordinary circumstances.

While higher deposit insurance premiums next year will result in lower industry earnings than would otherwise be the case, the FDIC believes that the coordinated efforts by the Treasury, Federal Reserve, and FDIC to expand banking system liquidity will help enable banks to increase lending to communities and businesses.

Finally, if Congress did not enact the reforms in 2006 that FDIC had sought, the FDIC would have to increase the reserve ratio to 1.25 percent within one year or charge an average rate on assessable deposits of at least 23 basis points. Banks and thrifts, in fact, did pay a minimum of 23 basis points in the early 1990s to rebuild the insurance funds.[11] The first quarter 2009 rates adopted in the final rule are significantly lower—most banks will be charged an annual rate between 12 and 14 basis points.

V. Effective Date

The final rule will take effect January 1, 2009, for the assessment for the first quarter of 2009.

[11] The insurance funds were the Bank Insurance Fund and Savings Association Insurance Fund. The funds were merged in 2006.

VI. Regulatory Analysis and Procedure

A. Administrative Procedure Act

The final rule setting assessment rates for the first assessment period of 2009 will become effective on January 1, 2009. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act that, once finalized, a rulemaking must have a delayed effective date of thirty days from the publication date.[12] The FDIC has determined that good cause exists for waiving the customary 30-day delayed effective date.

Recent failures of FDIC-insured institutions caused the reserve ratio of the DIF to decline from 1.19 percent as of March 31, 2008, to 0.76 percent as of September 30, 2008. Furthermore, the FDIC expects a higher rate of institution failures in the next few years compared to recent years, leading to a further decline in the reserve ratio. Under these circumstances, the FDIC is required by statute to establish and implement a restoration plan to restore the reserve ratio to no less than 1.15 percent within five years. In light of the current reserve ratio, the continuing unusual and exigent circumstances in the banking system, and the statutory requirements, restoring the reserve ratio to at least 1.15 percent within five years requires an increase in assessment rates, including an increase in the assessment rates for the first quarter of 2009. For these reasons, the FDIC finds that good cause exists to justify a January 1, 2009 effective date.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand and received one response. The comment (which did not distinguish between the provisions effective January 1, 2009, and those effective April 1, 2009) stated that the proposal was too complicated and should have included an executive summary in bullet point format.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment.[13] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[14] The final rule relates directly to the rates imposed on insured depository institutions for deposit insurance. Nevertheless, the FDIC voluntarily undertook a regulatory flexibility analysis to aid the public in commenting upon the small business impact of the proposed rule. The initial regulatory flexibility analysis was published in the **Federal Register** (73 FR 61560) on October 16, 2008. Public comment was invited. The FDIC received no comments on the initial regulatory flexibility analysis regarding the 7 basis point increase in assessment rates proposed for the first quarter of 2009 only.

As of September 30, 2008, of the 8,384 insured commercial banks and savings institutions, there were 4,753 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.*, those with $165 million or less in assets).[15]

The FDIC's total assessment needs are driven by the statutory requirement that the FDIC adopt a Restoration Plan that provides that the fund reserve ratio reach at least 1.15 percent within five years (absent extraordinary circumstances) and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. Under the final rule, each institution's existing rate for the first quarter of 2009 is increased uniformly by 7 basis points to help meet FDIC assessment revenue needs. Apart from the uniform increase in rates on all institutions to help meet the FDIC's total revenue needs, the final rule makes no other changes in rates for any insured institution, including small insured depository institutions. The final rule increasing assessment rates uniformly by 7 basis points across the board for all institutions, including small institutions for RFA purposes, does not alter the present distribution of assessment rates.

The final rule does not directly impose any ''reporting'' or ''recordkeeping'' requirements within the meaning of the Paperwork

[12] 5 U.S.C. 553(d)(3).

[13] See 5 U.S.C. 603, 604 and 605.

[14] 5 U.S.C. 601

[15] Throughout this regulatory flexibility analysis (unlike the rest of the notice of proposed rulemaking), a ''small institution'' refers to an institution with assets of $165 million or less.

Reduction Act. The compliance requirements for the proposed rule would not exceed existing compliance requirements for the present system of FDIC deposit insurance assessments, which, in any event, are governed by separate regulations.

The FDIC is unaware of any duplicative, overlapping or conflicting federal rules.

D. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub.L. 105–277, 112 Stat. 2681).

F. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law No. 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

■ For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Pub. L. 109–171, 120 Stat. 9–21, and Sec. 3, Pub. L. 109–173, 119 Stat. 3605.

■ 2. In § 327.10 add a new paragraph (d) to read as follows:

§ 327.10 Assessment rate schedules.

* * * * *

(d) *Assessment Rate Schedule for First Assessment Period of 2009.* The annual assessment rate for an insured depository institution for the assessment period beginning January 1, 2009 and ending March 31, 2009, shall be the rate prescribed in the following schedule:

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	14	17	35	50

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Rate Schedule.* The annual assessment rates for all institutions in Risk Category I shall range from 12 to 14 basis points.

(2) *Risk Category II, III, and IV Rate Schedule.* The annual assessment rates for Risk Categories II, III, and IV shall be 17, 35, and 50 basis points respectively.

(3) All institutions in any one risk category, other than Risk Category I, will be charged the same assessment rate.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix 1—Analysis of the Projected Effects of the Payment of Assessments on the Capital and Earnings of Insured Depository Institutions

I. Introduction

This analysis estimates the effect of the deposit insurance assessments adopted in the final rule for the first quarter of 2009 on the equity capital and profitability of all insured institutions. The analysis assumes that each institution's pre-tax, pre-assessment income in the first quarter is equivalent to one fourth of the amount reported over the four quarters ending in September 2008. Each institution's rate under the rate schedule is based on data as of September 30, 2008.[16] In addition, the projected use of one-time credits authorized under the Reform Act is taken into consideration in determining the effective assessment for an institution.

II. Analysis of the Projected Effects on Capital and Earnings

While deposit insurance assessment rates generally will result in reduced institution profitability and capitalization compared to the absence of assessments, the reduction will not necessarily equal the full amount of the assessment. Two factors can mitigate the effect of assessments on institutions' profits and capital. First, a portion of the assessment may be transferred to customers in the form of higher borrowing rates, increased service fees and lower deposit interest rates. Since information is not readily available on the extent to which institutions are able to share assessment costs with their customers, however, this analysis assumes that institutions bear the full after-tax cost of the assessment. Second, deposit insurance assessments are a tax-deductible operating expense; therefore, the assessment expense can lower taxable income. This analysis considers the effective after-tax cost of assessments in calculating the effect on capital.[17]

An institution's earnings retention and dividend policies also influence the extent to which assessments affect equity levels. If an institution maintains the same *dollar* amount of dividends when it pays a deposit insurance assessment as when it does not, equity (retained earnings) will be less by the full amount of the after-tax cost of the assessment. This analysis instead assumes that an institution will maintain its dividend *rate* (that is, dividends as a fraction of net income) unchanged from the weighted average rate reported over the four quarters ending September 30, 2008. In the event that the ratio of equity to assets falls below 4 percent, however, this assumption is modified such that an institution retains the amount necessary to achieve a 4 percent minimum and distributes any remaining funds according to the dividend payout rate.

The equity capital of insured institutions as of September 30, 2008 was $1.304 trillion. Based on the assumptions for earnings described above, March 31, 2009 equity capital is projected to equal $1.302 trillion under the rates adopted in the final rule. In the absence of an assessment, total equity would be an estimated $1.6 billion higher. Alternatively, total equity would be an estimated $0.6 billion higher if current rates remained in effect.

[16] For purposes of this analysis, the assessment base (like income) is not assumed to increase, but is assumed to remain at September 2008 levels. Income is defined as income before taxes, extraordinary items, and deposit insurance assessments. Assessments are adjusted for the use of one-time credits, and all income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[17] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

On an industry weighted average basis, projected total assessments through the end of the first quarter of 2009 would result in capital that is 0.1 percent less than in the absence of assessments and 0.04 percent less than if the current rates remained in effect. The analysis indicates that assessments would cause 3 institutions whose equity-to-assets ratio would have exceeded 4 percent in the absence of assessments to fall below that percentage and 2 institutions to have below 2 percent equity-to-assets that otherwise would not have. Alternatively, compared to current assessments, the increase in assessments would cause one institution whose equity-to-assets ratio would otherwise have exceeded 4 percent to fall below that threshold and no institutions to fall below 2 percent equity-to-assets.

The effect of assessments on institution income is measured by deposit insurance assessments as a percent of income before assessments, taxes, and extraordinary items (hereafter referred to as ''income''). This income measure is used in order to eliminate the potentially transitory effects of extraordinary items and taxes on profitability. For profitable institutions, the median projected reduction in income relative to the absence of assessments is 8.3 percent, while the weighted average reduction for the same institutions is 5.9 percent. For unprofitable institutions, assessments would increase losses by 4.4 percent. When compared to current rates (rather than the absence of assessments), the weighted average reduction in income for profitable institutions is 3.4 percent, while the increase in losses for unprofitable institutions is 2 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of October 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 371

RIN 3064–AD30

Recordkeeping Requirements for Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule establishing recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in a troubled condition as defined in this rule. The appendix to the rule requires an institution in a troubled condition, upon written notification by the FDIC, to produce immediately at the close of processing of the institution's business day, for a period provided in the notification, the electronic files for certain position level and counterparty level data; electronic or written lists of QFC counterparty and portfolio location identifiers, certain affiliates of the institution and the institution's counterparties to QFC transactions, contact information and organizational charts for key personnel involved in QFC activities, and contact information for vendors for such activities; and copies of key agreements and related documents for each QFC.

DATES: This final rule is effective January 21, 2009.

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SUPPLEMENTARY INFORMATION:

I. Background

QFCs are certain financial contracts that have been defined in the Federal Deposit Insurance Act (FDI Act) and receive special treatment by the FDIC in the event of the failure of an insured depository institution (institution). The special treatment of QFCs after the FDIC's appointment as receiver or conservator for a failed institution initially was codified in the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) [1] and places certain restrictions on the FDIC as receiver [2] for a failed institution that held QFCs.

The FDI Act identifies QFCs using the statutory definition of five specific financial contracts. This statutory list of QFCs consists of securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements.[3] The FDIC also may define other similar agreements as QFCs by rule or order.[4] In addition, a master agreement that governs any contracts in these five categories is treated as a QFC,[5] as are security agreements that ensure the performance of a contract from the five enumerated categories.[6]

Under the FDI Act and other U.S. insolvency statutes, a party to QFCs with the insolvent entity can exercise its contractual right to terminate QFCs and offset or net out any amounts due between the parties and apply any pledged collateral for payment.[7] Under the Bankruptcy Code, this right is immediate upon initiation of bankruptcy proceedings, while under the FDI Act, counterparties cannot exercise this contractual right until after 5 p.m. (Eastern Time) on the business day following the appointment of the FDIC as receiver.[8] By contrast, parties to most other contracts with insured institutions cannot terminate the contracts based upon the appointment of the FDIC as receiver.[9] The special rights granted by the FDI Act to QFC counterparties are designed to protect the stability of the financial system and to reduce the potential for cascading interrelated defaults.

If QFC counterparties were unable to terminate and liquidate their positions in a timely manner after the failure of the institution, they would be exposed to market risks and uncertainty regarding the ultimate resolution of QFCs. Absent the ability to terminate a QFC in a timely manner when the counterparty becomes insolvent (which may include exercising rights to offset positions, net payments, and use collateral to cover amounts due), the potential for fluctuation in the value of the QFCs from changes in interest rates and other market factors may create market uncertainty that could lead to broader market disruptions. Consequently, while the Bankruptcy

[1] Public Law No. 101–73, 103 Stat. 514 (August 9, 1989).

[2] Most of the restrictions applicable to the treatment of QFCs by an FDIC receiver also apply to the FDIC in its conservatorship capacity. *See* U.S.C. 1821(e)(8), (9), (10), and (11). While the treatment of QFCs by an FDIC conservator is not identical to the treatment of QFCs in a receivership, *see* 12 U.S.C. 1821(e)(8)(E) and (10)(B)(i) and (ii), for purposes of this preamble we intend reference to the FDIC in its receivership capacity to include its role as conservator under this statutory authority.

[3] 12 U.S.C. 1821(e)(8)(D)(ii)–(vi).

[4] 12 U.S.C. 1821(e)(8)(D)(i). The FDIC has provided clarifying definitions for repurchase agreements and swap agreements in 12 CFR 360.5.

[5] 12 U.S.C. 1821(e)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), and (vi)(V).

[6] 12 U.S.C. 1821(e)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), and (vi)(VI).

[7] 12 U.S.C. 1821(e)(8); 11 U.S.C. 555 (securities contracts), 556 (commodities and forward contracts), 559 (repurchase agreements), 560 (swap agreements), and 561 (master netting agreements).

[8] *See* 12 U.S.C. 1821(e)(10)(B).

[9] 12 U.S.C. 1821(e)(13).

Code and the FDI Act generally do not contain provisions covering creditor or counterparty liquidity concerns arising from insolvency proceedings, those statutes do contain safeguards for counterparties that have entered into certain financial contracts under the Bankruptcy Code and the FDI Act.[10] Both of these statutes treat these types of financial contracts differently from other contracts that an entity may have entered into prior to bankruptcy or failure.[11]

Congress, however, recognized the tension between the need of the FDIC as receiver to efficiently resolve a failed institution and the desire to maintain stability in the financial markets. Thus, the treatment of QFCs for failed institutions under the FDI Act provides the FDIC with limited flexibility in crafting a resolution with respect to the institution's QFC portfolio. These provisions allow the FDIC to reduce losses to the deposit insurance fund and retain the value of the failed institution's portfolio, while minimizing the potential for market disruptions that could occur with the liquidation of a large QFC portfolio.

After its appointment as receiver, the FDIC has three options in managing the institution's QFC portfolio: (1) Transfer the QFCs to another financial institution, (2) repudiate the QFCs, or (3) retain the QFCs in the receivership. Within certain constraints, the FDIC can apply different options to QFCs with different counterparties.

First, the receiver may transfer a QFC to any other financial institution not currently in default, including but not limited to foreign banks, uninsured banks, and bridge banks or conservatorships operated by the FDIC. If the receiver transfers a QFC to another financial institution, the counterparty cannot exercise its contractual right to terminate the QFC based solely on the transfer, the insolvency, or the appointment of the receiver.

Second, the FDIC as receiver may repudiate a QFC, within a reasonable period of time, if the receiver determines that the contract is burdensome.[12] If the receiver repudiates the QFC, it must pay actual direct compensatory damages, which may include the normal and reasonable costs of cover or other reasonable measure of damages used in the industry for such claims, calculated as of the date of repudiation.[13] If the receiver determines to transfer or repudiate a QFC, all other QFCs entered into between the failed institution and that counterparty, as well as those QFCs entered into with any of that counterparty's affiliates, must be transferred to the same financial institution or repudiated at the same time.

Third, the FDIC as receiver may retain a QFC in the receivership. This option would allow the counterparty to terminate the contract. If a QFC is terminated by the counterparty or repudiated by the receiver, the counterparty may exercise any contractual right to net any payment the counterparty owes to the receiver on a QFC against any payment owed by the receiver to the counterparty on a different QFC.

The FDIC as receiver has very little time to choose among these three options. Under the FDI Act, the FDIC as receiver has until 5 p.m. (Eastern Time) on the business day following the date of its appointment as receiver to make its decision to transfer any QFCs. During this period, counterparties are prohibited from terminating or otherwise exercising any contractual rights triggered by the appointment of the receiver under the QFC agreements. In effect, the same time limitation applies to repudiation because, after the expiration of this brief stay, counterparties are free to exercise any contractual right to terminate the QFCs and avoid the FDIC's power to repudiate. If the FDIC as receiver decides to transfer any QFCs, it must take steps reasonably calculated to provide notice of the transfer of the QFCs of the failed institution to the relevant counterparties, who are prohibited from exercising such rights thereafter.[14]

To make a well-informed decision on these three options, the FDIC needs access to information such as the types of QFCs, the counterparties and their affiliates, the notional amount and net position on the contracts, the purpose of the contracts, the maturity dates, and the collateral pledged for the contracts. Given the FDI Act's short time frame for such decision by the FDIC in the case of a QFC portfolio of any significant size or complexity, it may be difficult to obtain and process the large amount of information necessary for an informed decision by the FDIC as receiver unless that information is readily available to the FDIC in a format that permits the FDIC to quickly and efficiently carry out an appropriate financial and legal analysis. The absence of adequate information for decision-making by the FDIC as receiver increases the likelihood that, in a failed bank situation, QFCs will be left in the receivership or repudiated, instead of transferred to open institutions or a bridge bank.

In light of the large volume of information concerning QFCs that a receiver must process in the limited time frame set forth in the FDI Act, the FDIC is establishing QFC recordkeeping requirements for institutions in a troubled condition, as described below.

II. The Proposed Rule

In 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act[15] was enacted, with section 908 of the Act authorizing the FDIC, in consultation with the other Federal banking agencies, to set recordkeeping requirements for QFCs held in institutions determined to be in a ''troubled condition.''[16] Consistent with this statutory authority, the FDIC issued a Notice of Proposed Rulemaking for recordkeeping requirements for QFCs (NPR), which was published in the **Federal Register** on July 28, 2008. *See* 73 FR 43635. The NPR invited comments from the public on all aspects of the proposal and in response to certain specific questions. In issuing the NPR, the FDIC stated that the QFC recordkeeping requirements in the proposed rule included position and counterparty data fields that likely were maintained by institutions as part of their risk management of capital markets activities. Given the financial exposures presented by QFCs and related counterparty risks and supervisory considerations, and after consultation with the other Federal banking agencies, the FDIC determined that the recordkeeping requirements in the proposed rule were consistent with safe and sound banking practices by insured depository institutions holding QFCs.

[10] 11 U.S.C. 555, 556, 559, 560, and 561; 12 U.S.C. 1821(e)(8).

[11] Without such protections for financial contracts and QFCs under the Bankruptcy Code and the FDI Act, respectively, a contract generally will be subject to an automatic stay upon the filing of a bankruptcy petition or the appointment of the FDIC as receiver. *See* 11 U.S.C. 361; 12 U.S.C. 1821(e)(13).

[12] 12 U.S.C. 1821(e)(1).

[13] 12 U.S.C. 1821(e)(3)(C).

[14] *See* 12 U.S.C. 1821(e)(10)(B). This limited time frame in which QFC counterparties are stayed from acting is in contrast to parties to other contracts with a failed institution which may be required to continue to perform by a receiver, and the receiver may stay a party from terminating such other contracts subject to monetary damages or default for up to 90 days.

[15] Public Law No. 109–8, 119 Stat. 23 (April 20, 2005); H.R. Rep. No. 106–834, section 9, at 35 (2000).

[16] 12 U.S.C. 1821(e)(8)(H).

III. Summary of Comments

The American Bankers Association (ABA), The Clearing House Association (The Clearing House), the Independent Community Bankers of America (ICBA), and the International Swaps and Derivatives Association (ISDA) submitted comments on the NPR. These comments focused on issues regarding the (1) the institutions covered by the rule, (2) the requirement that QFC ''position level'' data be reported under the data fields in Table A1 of Appendix A, (3) the requirement that QFC counterparty level data be reported under the data fields in Table A2 of Appendix A, (4) the requirement of a standardized reporting format for the reporting of both position level and counterparty-specific data, (5) the proposed time frame for compliance, and (6) the differences between the QFC reporting requirements for purposes of the Basel II Advanced Approaches final rule and the QFC reporting requirements under Tables A1 and A2 of the proposed rule.

A. *Institutions Covered under the Rule.* Certain comment letters on the proposed rule suggested that the FDIC exclude from the definition of ''troubled condition'' institutions with a composite supervisory rating of 3 under the Uniform Financial Institution Rating System, because complying with the requirements of the rule could signal to employees, other institutions, and eventually the public that the institution is in financial distress. It was suggested by one commenter that ''3'' rated institutions not be required to comply with the rule unless the institution either holds more than $10 billion in assets or its primary federal regulator agrees that the institution should be required to comply. Another comment letter suggested that the rule apply only to institutions that have been found to have poor QFC risk management practices in place for their portfolios, or unsustainable QFC concentrations. Another comment letter suggested that because the use of QFCs by smaller community banks is limited, the rule should not apply to institutions with less than $5 billion in assets, or with fewer than ten open QFC positions on the balance sheet at any one time.

Under section 370.1(c) of the proposed rule, consistent with the Congressional directive, the FDIC provided that only institutions that were in a ''troubled condition'' would be covered by the rule. The FDIC based its definition of that term in the proposed rule on its current definition of ''troubled condition'' in 12 CFR 303.101(c), which was promulgated to implement 12 U.S.C. 1831i, regarding the Federal banking agencies' approval of the appointment of directors and senior executive officers of institutions. The proposed rule added one new criterion to that definition and expanded another criterion in the current definition to reflect the FDIC's data needs in its role as receiver under the FDI Act. The new criterion was that, notwithstanding the composite rating of the institution by that agency in its most recent report of examination, the institution is determined by the appropriate Federal banking agency, or the FDIC in consultation with the appropriate Federal banking agency, to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress. Another criterion was expanded to include institutions with a 3 composite rating and total consolidated assets over $10 billion.

The FDIC has determined that it is appropriate to include institutions with a 3 composite rating and total consolidated assets over $10 billion, because these institutions are likely to pose risks to the deposit insurance fund arising from QFC activities. The FDIC has similar concerns regarding risks to the deposit insurance fund arising from any insured depository institution with QFCs that is experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, irrespective of the institution's supervisory rating. Based on its experience in its receivership capacity, the FDIC believes it is prudent to give institutions facing deteriorating conditions sufficient time to comply with this rule. Accordingly, the FDIC believes it is imperative that institutions with a supervisory rating of 3 and total assets of $10 billion or greater and/or experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress develop and maintain the QFC position level and counterparty-specific data fields shown in Tables A1 and A2 of the Appendix to this rule.

The FDIC does not believe that the ''signaling'' problem expressed in certain comment letters justifies exempting certain institutions in a troubled condition from maintaining QFC information consistent with safe and sound practices as required by this rule. The FDIC's request for information would be non-public, as are many other supervisory directives. Also, the recordkeeping requirements in this final rule do not impose any restrictions on the business operations of institutions covered by this rule.

B. *QFC Position Level-Specific Data Fields (Table A1 of Appendix A).* The ISDA and The Clearing House comment letters indicated that institutions usually do not maintain and aggregate the position-level information requested in Table A1 of Appendix A of the proposed rule, but instead aggregate information by counterparty. As noted in these comment letters, the FDIC's receivership authority under section 11(e)(9) of the FDI Act, 12 U.S.C. § 1821(e)(9), requires that the FDIC treat all QFC contracts with a single counterparty and its affiliates similarly when deciding whether to transfer, repudiate or retain the QFC portfolio of a failed institution. Accordingly, in their view, transaction-level QFC position information should be unnecessary for the FDIC's decision-making process. These comment letters also indicated that the ''purpose of the position'' field be eliminated from Table A1 because institutions typically do not record this information for specific QFC positions and the purpose of a QFC position can change in dynamic markets. The Clearing House also indicated that providing a full transaction-level understanding of the broad range of QFCs would entail different recordkeeping requirements for specific QFCs, thereby resulting in increased implementation complexity and associated costs.

The FDIC has determined that the position-level QFC data fields in Table A1 of the Appendix to this final rule provide information necessary to enable the FDIC to meet its obligations under the least cost test for closed bank resolutions under section 13(c)(4) of the FDI Act, 12 U.S.C. § 1823(c)(4). The information required in Table A1 (e.g., the current market value of the QFC position, the type and purpose of the position, and the notional or principal amount of the position) are important to the evaluation of the costs associated with the FDIC as receiver's decision to (1) transfer the QFCs to another financial institution, (2) repudiate the QFCs, or (3) retain the QFCs in the receivership.

As an example of the importance of position-level QFC data to the FDIC's least-cost resolution decisions in its receivership capacity, if one of the counterparty's QFC positions is a forward sale contract (a contract that allows the institution to sell assets at a set price in the future), and the institution has amassed a $50 million ''pipeline'' of assets for future delivery under the contract, the FDIC as receiver may realize significant financial benefits by transferring the forward contract together with the mortgage loan pipeline

that it hedges. These financial benefits may, on the whole, exceed the savings that the receivership might realize if all of that counterparty's QFCs remained with the receivership and the loan pipeline were sold without the hedge. In another example, information identifying the ''booking location'' of individual QFCs would enable the FDIC to classify QFCs by foreign branch location and thereby allow the FDIC to evaluate the potential effect of ''ring-fencing,'' whereby foreign governments use foreign assets held by a failed U.S. institution to satisfy claims of depositors and creditors in that same jurisdiction. Identifying the type and purpose of QFCs on both an individual transaction level and on an aggregate basis will permit the FDIC to assess the impact that QFC determinations may have on a counterparty's other banking relationships with a failed institution. For example, knowledge of how particular QFCs fit into a counterparty's business with the institution might lead the FDIC to transfer the QFCs to a bridge bank in order to maintain the value of a customer relationship that otherwise would be destroyed if QFC determinations were made without regard to a QFC's purpose. As a specific illustration, a QFC might include an interest rate swap between an institution and a borrower, which is designed to tailor the interest payment due on the loan. Position-level QFC data would permit the FDIC to make an informed judgment concerning the least-cost disposition of the customer relationship. Also, position-level data would enable the FDIC to consider clearinghouse arrangements used for settling trades, which may influence the disposition of other QFCs settled through the same clearinghouse.

Information provided in Table A1 also may be needed by the FDIC as receiver to determine how to react to the termination of contracts by a counterparty in the event that such contracts are not transferred. A counterparty is under no obligation to terminate all of its contracts with the FDIC as receiver. Accordingly, in this situation, counterparty level data will be of little value, and the FDIC as receiver must obtain position-level data in order to satisfy the termination provisions of the contract.

As discussed below, the FDIC has addressed concerns related to the position-specific data fields in Table A1 through a more flexible approach for institutions' formats for reporting the QFC position-specific data fields in Table A1. In support of this approach, The Clearing House comment letter provided that:

> Except as noted above, each piece of data set forth in the Proposal is generally maintained by each institution in some form. However, there is no reason that an institution would need to assemble all of the information required by the Proposal into a single, centralized database, whether upon demand or on an on-going basis.[17]

The introduction to Table A1 in the Appendix has been revised to state that no later than three business days after the institution's receipt of the written notification from the FDIC under section 371.1(c) of this Part, the institution must provide the FDIC with (i) a directory of the electronic files that will be used by the institution to maintain the position level data found in Table A1 and (ii) a point of contact at the institution should the FDIC have follow-up questions concerning this information.

In response to certain comment letters regarding whether the FDIC needs the data field in Table A1 that covers the ''purpose of the position'' for QFCs (*e.g.*, whether the QFC position is being used for hedging or trading purposes), the FDIC has determined that this data field is necessary for it to quickly ascertain the potential impact of its receivership options regarding certain QFC positions.[18]

C. *QFC Counterparty-Specific Data Fields (Table A2 of Appendix A).* The Clearing House and ISDA comment letters acknowledged the significance of the counterparty-specific data fields in Table A2 of Appendix A of the proposed rule. On this point, The Clearing House comment letter stated:

> A focus on counterparty-level data is also consistent with the way in which institutions manage exposure and risk in their QFC portfolios. Financial institutions generally manage trading relationships on a counterparty-by-counterparty basis rather than on a trade-by-trade basis. To assess the risks and benefits that a trading relationship presents to an institution, the institution must be able to evaluate, on an on-going basis, aggregate information for that particular counterparty. In other words, while credit and market risk and other aspects of a trading relationship with a single counterparty are, of course, monitored through various systems, the primary factor a depository institution must assess in evaluating the immediate loss that it would suffer if a counterparty were to default is the institution's aggregate position vis-à-vis that counterparty. Existing information systems are already built with this objective in mind.[19]

The ISDA comment letter provided similar justification for the data fields required in Table A2 of Appendix A of the proposed rule.

D. *Reporting Format for Data Fields Required in the Rule.* The ABA commented that since banking organizations currently maintain QFC position-specific data in various formats and across various databases, the requirements in Table A1 and A2 of the Appendix of the proposed rule would require costly system upgrades and potential contract renegotiations with service providers. The ABA recommended instead that covered institutions be allowed to provide the FDIC the information in its existing format and include a ''roadmap'' of where the required information can be found.

The proposed rule did not mandate a specific format for the reporting by institutions in a troubled condition of the position level specific data fields in Table A1; instead, the FDIC provided a functional criterion that the data fields must be accessible for FDIC's monitoring purposes. In conjunction with the appropriate Federal banking agency, the FDIC will discuss with such institutions whether the existing electronic data files maintained by the respective institutions are in a suitable format to produce information required under the data fields in Table A1. Similarly, for purposes of the counterparty-level data fields in Table A2, the final rule requires that such data fields must be maintained in an electronic file in a format acceptable to the FDIC.

The FDIC also notes that its data maintenance requirements for QFCs are consistent with recommendations that have been developed by industry participants to measure and safeguard risks to financial institutions arising from the OTC derivatives market. The recent report from the Counterparty Risk Management Policy Group III (CRMPG III) recommends various measures to safeguard risks to financial institutions arising from counterparty credit risk.[20] Significantly, the CRMPG III report stated:

[17] Letter to the FDIC from The Clearing House, dated October 30, 2008, p. 10. Similar comments were provided in the letter to the FDIC from ISDA dated October 31, 2008, p. 2; and the letter to the FDIC from the American Bankers Association dated September 26, 2008, p. 2.

[18] The information required for the ''purpose of position'' field is similar to information required under Financial Accounting Standards Board (FASB) Statements No. 133 and 161. Under these Statements, disclosures must be made as to whether derivatives are held for speculative purposes or risk mitigation, the types of risk mitigation strategies implemented, and how the use of derivatives affects the institutions financial position and performance. Accordingly, institutions should be able to identify the purpose of entering into QFC contracts to meet these accounting requirements.

[19] Letter to the FDIC from The Clearing House, dated October 30, 2008.

[20] CRMPG III, Containing Systemic Risk: The Road to Reform (August 6, 2008).

The Policy Group recommends that large integrated financial intermediaries ensure that their credit systems are adequate to compile detailed exposures to each of their institutional counterparties on an end-of-day basis by the opening of business the subsequent morning. In addition, the Policy Group recommends that large integrated financial intermediaries ensure their credit systems are capable of compiling, on an *ad hoc* basis and within a matter of hours, detailed and accurate estimates of market and credit risk exposure data across all counterparties and the risk parameters set out below. Within a slightly longer time frame this information should be expandable to include: (1) The directionality of the portfolio and of individual trades; (2) the incorporation of additional risk types, including contingent exposures and second and third order exposures (for example, SIVs, ABS, *etc.*); and (3) such other information as would be required to optimally manage risk exposures to a troubled counterparty.[21]

The FDIC views the recordkeeping requirements contained in part 371 as consistent with the Policy Group's recommendation.

For purposes of minimizing the recordkeeping burdens for community banks under this final rule, we have provided in the Appendix of the final rule that for institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC under part 371 and the Appendix, the data required in Tables A1 and A2 may be recorded and maintained in a written format so long as the data are capable of being updated on a daily basis.

E. *Time Period for Compliance.* Three of the four comment letters stated that the proposed 30-day time period to comply after being notified of being in a troubled condition would be too short, especially if institutions had to change their systems or renegotiate contracts with third party service providers. One suggestion was to allow a ''roadmap'' compliance system, as discussed above, in which an institution would provide the FDIC a roadmap as to how the information could be collected when needed rather than actually assembling and providing the information on a regular basis. A second suggestion was to permit an institution to formally request an extension of time for compliance. In addition, the ABA comment letter recommended that the QFC data be updated only weekly because many of the large broker dealers operate global, around-the-clock operations and would have difficulty updating their files daily.

In response to these comments, in order to meet the statutory deadlines for decisions on QFCs upon the appointment of the FDIC as receiver for an institution in a troubled condition under section 11(e)(10) of the FDI Act, FDIC staff has determined that an initial 60 day compliance deadline. However, the FDIC will permit institutions to request additional extensions of this deadline, which the FDIC may grant after review on a case-by-case basis. Institutions should submit a request for an extension to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this rule, and the institution's request should contain the reasons why the extension is needed.

F. *Conflict with Basel II implementation.* The ABA comment letter suggested that implementing the QFC recordkeeping rule and the Basel II Advanced Approaches final rule at the same time would be overly burdensome and ineffective; therefore, either the QFC rules should ''piggyback'' the Basel II rules or institutions should be able to use the same information systems for both.

The FDIC and the other Federal banking agencies have developed reporting schedules for purposes of implementing the Basel II Advanced Approaches final rule. The FDIC has determined that the relevant schedules that have been developed for Basel II implementation do not contain counterparty-level data that Table A2 would require nor the specific data fields presented in Table A1 of Appendix A.[22] Instead, these schedules report information aggregated across multiple transactions and counterparties. Accordingly, the interagency Basel II schedules for derivative contract exposures are neither duplicative nor appropriate for the FDIC's data needs in its receivership capacity under the FDI Act. In addition, several of the QFC categories under the FDI Act are not covered explicitly under the Basel II reporting schedules. It also is likely that fewer than twenty banks in the United States will implement the Basel II Advanced Approaches final rule for purposes of their risk-based capital requirements. Accordingly, the FDIC has determined not to change the proposed rule in this respect.

IV. The Final Rule

The final rule differs from the proposal by providing in section 371.1(c) that the institutions subject to this rule must comply within 60 days after they receive written notification from their appropriate Federal banking agency or the FDIC. The FDIC may, at its discretion, grant one or more extensions of time for compliance with this rule. No single extension may be for a period of more than 30 days. Such institutions may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this part. In addition, the final rule provides that not later than three business days after the institution's receipt of the written notification from the FDIC under section 371.1(c) of this part, the institution must provide the FDIC with (i) a directory of the electronic files that will be used by the institution to maintain the position level data found in Table A1 and (ii) a point of contact at the institution should the FDIC have follow-up questions concerning this information. Section 371.5 has been added to clarify that violating the terms or requirements of part 371 and Appendix A constitutes a violation of a regulation and may subject the institution to enforcement actions under section 8 of the FDI Act (12 U.S.C. 1818).

Furthermore, a ''de minimus'' provision has been included to provide that for institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC or the institution's appropriate Federal banking agency under Part 371 and this Appendix, the data required in Tables A1 and A2 is not required to be recorded and maintained in electronic form as would otherwise be required by this part, so long as all required information is capable of being updated on a daily basis. If at any point in time after receiving such notification an institution has twenty or more open QFC positions, it must within 60 days after that first occurs, comply with all provisions of part 371.

Other changes to the proposed rule are: (1) The change of the designated part of the FDIC's codified regulations for this rule from part 370 for the proposed to part 371 for the final rule; (2) as recommended in ISDA's comment letter, the penultimate data field in Table A2 will read: ''Counterparty's collateral excess or deficiency with respect to all of the institution's positions with each counterparty, as determined under each applicable

[21] *Id.* at 81.

[22] See Federal Financial Institutions Examination Council, Risk-Based Reporting for Institutions Subject to the Advanced Capital Adequacy Framework—FFIEC 101, Schedule H (Wholesale Exposure—Eligible Margin Loans, Repo-Style Transactions and OTC Derivatives, with Cross-Product Netting); Schedule I—Wholesale Exposure—Eligible Margin Loans and Repo-Style Transactions, No Cross-Product Netting); and Schedule J (Wholesale Exposure—OTC Derivatives, No Cross-Product Netting).

agreement including thresholds and haircuts where applicable;'' and (3) also as recommended in ISDA's comment letter, the second bullet item under section B.1 will read: ''A list of the affiliates of the counterparties that are also counterparties to QFC transactions with the institution or its affiliates, and the specific master netting agreements, if any, under which they are counterparties.''

Section 371.1 provides that this part applies to insured depository institutions that are in a troubled condition, as defined in section 371.2(f), and that such institutions shall comply with this part (1) within 60 days after written notification by the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition, or (2) within a period requested by the institution and approved by the FDIC for an extension of this compliance deadline at least 15 days prior to the deadline.

Section 371.2 provides definitions for purposes of this part. In particular, ''troubled condition'' means any insured depository institution that (1) has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of ten billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; (2) is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; (3) is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency; (4) is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate Federal banking agency; or (5) is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

As required by the statutory authority for the FDIC's promulgation of this final rule for QFC recordkeeping by insured depository institutions in a ''troubled condition,'' we have determined that the definition of ''troubled condition'' in this final rule is consistent with the current definition of ''troubled condition'' in 12 CFR 303.101(c), and supplements the criteria in that definition with certain additional criteria that reflect the FDIC's concern that institutions in a troubled condition need to produce necessary QFC data for purposes of the FDIC meeting its statutory obligations under section 11(e) of the FDI Act, in the event of the failure of any such institution. The third and fourth criteria of the term ''troubled condition'' as defined in final rule are similar to criteria for the definition of that term in other FDIC rules and the rules of the other Federal banking agencies (which generally implement 12 U.S.C. 1831i, regarding the Federal banking agencies' approval of appointment of directors and senior executive officers of institutions).[23] However, the first, second, and fifth criteria for the definition of ''troubled condition'' in the proposed rule differ from the other agencies' rules that implement 12 U.S.C. 1831i.

Consistent with the FDIC's and the other Federal banking agencies' definition of ''troubled condition'' for purposes of 12 U.S.C. 1831i, the first criterion of the definition of ''troubled condition'' in this proposed rule includes institutions with a composite rating, as determined by its appropriate Federal banking agency in its most recent examination, of 4 or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating. However, for purposes of this first criterion for ''troubled condition'' in this proposed rule, the FDIC has included any insured depository institution with total consolidated assets of ten billion dollars or greater and a composite rating, as determined by its appropriate Federal banking agency in its most recent examination, of 3 under the Uniform Financial Institution Rating System. The inclusion of institutions of such asset size with a composite rating of 3 reflects the risks to the deposit insurance fund arising from large institutions with QFC portfolios for which the appropriate Federal banking agency has assigned a composite rating of 3.

The second criterion of the definition of ''troubled condition'' in this proposed rule reflects the FDIC's responsibility to terminate the deposit insurance of institutions that pose unreasonable risk to the deposit insurance fund. Similarly, the fifth criterion of this definition is based on circumstances that create a significant risk that an institution may require the appointment of the FDIC as receiver.

Section 371.3 provides that the records required to be maintained by an insured depository institution for QFCs under this part (except for records that must be maintained through electronic files under Appendix A of this part) may be maintained in any form, including in an electronic file, provided that the records are updated at least daily. Records not maintained in written form must be capable of being reproduced or printed in written form. Records must be made available upon written request by the institution's appropriate Federal banking agency or the FDIC immediately at the close of processing of the institution's business day, for a period provided in that written request. The report will contain information as of the close of business on the report day. Insured depository institutions that are in a troubled condition as defined in section 371.2(f) shall continue to maintain records required to comply with this part for a period of one year after the date that the appropriate Federal banking agency notifies the institution that it is no longer in a troubled condition as defined in section 371.2(f). If an insured depository institution that has been determined by the appropriate Federal banking agency to be in a troubled condition ceases to exist as an insured depository institution as a result of a merger or a similar transaction into an insured depository institution that is not in a troubled condition immediately following the acquisition, the obligation to comply with this part will terminate when the institution in a troubled condition ceases to exist as an insured depository institution.

Section 371.4 provides that for each QFC for which an insured depository institution is a party or is subject to a master netting agreement involving the QFC, that institution must maintain records as listed under Appendix A of this part.

Section 371.5 was added to the final rule to clarify that violating the terms or

[23] *See* 12 CFR 303.101(c) (FDIC), 12 CFR. 5.51(c)(6) (OCC), 12 CFR 225.71(d) (FRB); and 12 CFR 563.555 (OTS).

requirements of part 371 and Appendix A constitutes a violation of a regulation and subjects the participating entity to enforcement actions under section 8 of the FDI Act (12 U.S.C. 1818).

V. Appendix A of the Final Rule: QFC Recordkeeping Requirements

Appendix A to part 371 sets forth the specific QFC recordkeeping requirements proposed in this NPR. These QFC recordkeeping requirements are organized into three categories as provided in Appendix A: (1) Position level data (Table A1), (2) counterparty level data (Table A2), and (3) certain contracts and lists of counterparty affiliates and identifiers, affiliates of the institution that are counterparties to QFC transactions, organizational charts involving the institution and its affiliates, and supporting vendors (Section B). An institution in a troubled condition is required to maintain the position level data and counterparty data listed under Tables A1 and A2 in electronic files in a format acceptable to the FDIC, and such institutions are required to demonstrate the ability to produce this information immediately at the close of processing of the institution's business day, for a period provided in a written notification by the FDIC. The files required under Section B are less quantitative and may be maintained in electronic format, in written format, or in a combination of those two formats. Nonetheless, the nature of this information requires that it be updated and available upon request on a daily basis. For institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC or the institution's appropriate Federal banking agency under part 371 and this Appendix, the data required in Tables A1 and A2 is not required to be recorded in electronic form as otherwise would be required by this part, so long as all required information is maintained and is capable of being updated on a daily basis.

The final rule and Appendix A are intended to facilitate the ability of the receiver to gather relevant information on QFCs in order to make business decisions within the short time frame between when a failure occurs and when the FDIC as receiver must act under 12 U.S.C. 1821(e)(9) and (10). Also, the data fields and related information required in Appendix A are important for the due diligence by institutions of their QFC agreements in conjunction with their risk management policies and procedures.

For purposes of the final rule and Appendix A, ''position'' is defined in the final rule to mean the rights and obligations of a person or entity as party to an individual transaction. For example, ''position'' would include the rights and obligations of an institution under a ''Transaction'' (as such term is defined in the 2002 Master Agreement of ISDA), such as an interest rate swap.

Table A1. No later than three business days after the institution's receipt of the written notification from the FDIC under section 371.1(c) of this part, the institution must provide the FDIC with (i) a directory of the electronic files that will be used by the institution to maintain the position level data found in Table A1 and (ii) a point of contact at the institution should the FDIC have follow-up questions concerning this information. Table A1 requires data that must be maintained regarding open QFC positions entered into by that institution.[24] For such data, the institution must produce at the close of processing of the institution's business day a report that aggregates the current market value and the amount of QFCs by each of the delineated fields. The institution must produce the report within 60 days of a written notification by the FDIC for the period specified in the notification. In addition, the FDIC also may require a certain combination of recordkeeping fields from Table A1 where significant for purposes of its evaluation of risks associated with the institution's positions.

The following data fields are required in Table A1:

1. *Unique position identifier.* This information includes CUSIP identifiers or unique trade confirmation numbers, if available. This information is needed in order to readily track and distinguish positions.

2. *Portfolio location identifier.* This information is used to provide the location in which the position is booked by the institution (*e.g.*, the New York or London branch of the institution).

3. *Type of position.* This information describes the products used, sold or traded by an institution. It includes position types such as interest rate swaps, credit default swaps, equity swaps, and foreign exchange forwards, and securities or loan repurchase agreements.

4. *Purpose of the position.* This information identifies the role of the QFC in the institution's business strategy. For example, it would identify whether the purpose of a position is for trading, or for hedging other exposures such as mortgage loan servicing or certificates of deposit.

5. *Termination date.* This date indicates when the institution's rights and obligations regarding the position are expected to end.

6. *Next call, put, or cancellation date.* This information indicates the next date when a call, put, or cancellation may occur with respect to the position.

7. *Next payment date.* This information includes payment dates for potential upcoming obligations.

8. *Current market value of the position.* This information covers position values as of the date of the file. It is used to determine if the institution is in- or out-of-the-money with the counterparty.

9. *Unique counterparty identifier.* This information is used to aggregate positions by counterparty.

10. *National or principal amount of the position.* This information is needed to assist in the FDIC's evaluation of the position. It includes the notional amount where applicable.

11. *Documentation status of the position.* This information documents whether the position was affirmed, confirmed, or neither affirmed nor confirmed. It is needed to determine the reliability of booked positions and their legal status.

Table A2. Table A2 requires data that must be maintained at the counterparty[25] level for all QFCs entered into by an institution. For such data, the institution must demonstrate the ability to produce immediately at the close of processing of the institution's business day, for a period provided in a written notification by the FDIC, a report that (i) itemizes, by each counterparty and its affiliates with QFCs with the institution, the data required in each field delineated in Table A2; and (ii) aggregates by field, for each counterparty and its affiliates, the data required in each field. The following data fields are required in Table A2:

1. *Unique counterparty identifier.* This information would be used by the FDIC to aggregate positions by counterparty.

2. *Current market value of all positions.* This data must be aggregated and to the extent permitted under all applicable agreements, netted as of the date of the file. If one or more positions cannot be netted against others, they would be maintained as separate entries.

3. *Current market value of all collateral posted by the institution.* This

[24] These positions include QFCs entered into by affiliates of the insured institution that are covered by the master agreements to which the institution is a party.

[25] The use of the term ''counterparty'' in Appendix A generally includes all entities (including all affiliates) that are effectively treated as a single counterparty under a master agreement.

information would include the current market value of all collateral and the types of collateral, if any, that the institution has posted against all positions with each counterparty.

4. *Current market value of all collateral posted by the counterparty.* This information includes the current market value of all collateral and the types of collateral, if any, that the counterparty has posted against all positions.

5. *Institution's collateral excess or deficiency.* This information is provided with respect to all the positions as determined under each applicable agreement, such as master netting agreements and security agreements. If all positions are not secured by the same collateral, then separate entries should be maintained for each collateral excess and/or deficiency. This information includes thresholds and haircuts where applicable.

6. *Counterparty's collateral excess or deficiency.* This information is provided with respect to all the positions as determined under each applicable agreement. If all positions are not secured by the same collateral, then separate entries should be maintained for each collateral excess and/or deficiency. This information would include thresholds and haircuts where applicable.

7. *Institution's collateral excess or deficiency for all positions.* This information would be based on the aggregate market value of the positions (after netting to the extent permitted under all applicable agreements) and the aggregate market value of all collateral posted by the institution against the positions, in whole or in part.

B. *Data files and contract information required under Section B:* Section B of Appendix A requires that other data files be maintained in either written or electronic format for QFCs and upon a written request by the FDIC, be produced immediately at the close of processing of the institution's business day, for the period provided in that written request. Each institution must maintain lists of: Counterparty identifiers with the associated counterparty and contact information; affiliates of the counterparties that are also counterparties to QFC transactions; affiliates of the institution that are counterparties to QFC transactions, specifically indicating which affiliates are direct or indirect subsidiaries of the institution; and portfolio location identifiers with the associated booking locations.

For each QFC, the institution must maintain copies in a central location or data base in the United States of certain agreements, including active master netting agreements, and other QFC agreements between the institution and its counterparties that govern the QFC; active or ''open'' confirmations, if the position has been confirmed; credit support documents; and assignment documents, if applicable. The institution also must maintain a legal entity organizational chart; an organizational chart of all personnel involved in QFC-related activities at the institution, parent and affiliates; and a list of vendors supporting the QFC-related activities.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [26] requires an agency publishing a final rule to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities. Under regulations issued by the Small Business Administration,[27] a ''small entity'' includes a bank holding company, commercial bank, or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

Under section 605(b) of the Regulatory Flexibility Act,[28] the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities. The final rule consists of requirements for institutions that have been determined to be in a troubled condition, as defined in the rule. These requirements include the maintenance of certain information regarding the institution's QFCs that it would be able to produce on short notice by the appropriate Federal banking agency or the FDIC. The rule would not have a significant economic impact on a substantial number of small entities for four reasons. First, QFCs are generally sophisticated financial instruments that are usually used by larger financial institutions to hedge assets, provide funding, or increase income. Because of the nature of the capital markets in which QFCs are used, smaller entities generally do not participate in such markets. Second, the number of small entities affected is further limited due to the proposed rule only being applicable to institutions that are determined to be in a troubled condition under the definition in the rule. Third, the impact on small entities that do use QFCs and are in a troubled condition further is limited by the fact that the information requested by the FDIC involves information that the institution already should have accessible if it is operated in a safe and sound manner. Fourth, the final rule minimizes recordkeeping burdens for community banks by allowing institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC under part 371 and the Appendix, to record and maintain data required in Tables A1 and A2 in a written format instead of an electronic format so long as the data are capable of being updated on a daily basis.

VII. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has assigned the following control numbers to the recordkeeping and reporting requirements for QFCs: 3064–0163.

In July 2008, the FDIC submitted the information collections contained in the proposed rule to OMB for review and approval. For purposes of the proposed rule, the FDIC estimated that the aggregate annual burden of complying with this rule to be 9,600 hours. This estimate assumed that 150 institutions would be subject to the requirements of the proposed rule and that such institutions would spend, on average, 24 hours annually complying with the proposed reporting requirements and 40 hours annually complying with the proposed records maintenance requirements. Factors considered in developing the burden estimate include the existing and historical average number of insured institutions with supervisory ratings of 3 (for institutions with total consolidated assets of ten billion dollars or greater), 4, or 5; the volume of QFC activity in institutions that presently have supervisory ratings of 3 (where the asset threshold for an institution is met or exceeded), 4, or 5; the time necessary to complete other types of regulatory reports; the frequency with which the FDIC may require institutions to produce QFC information under this proposed rule; and the time necessary to update and

[26] 5 U.S.C. 603(a).

[27] 13 CFR 121.201.

[28] 5 U.S.C. 605(b).

maintain QFC and related information as required in the proposed rule.

The FDIC's PRA estimate for the final rule is derived from the product of the estimated number of institutions that would be subject to the final rule and the estimated hours per respondent necessary to meet the final rule's reporting and records maintenance requirements. The estimated number of institutions subject to the requirements of the final rule is 190, an increase of 40 since the publication of the proposed rule.

The combined reporting and record maintenance burdens related to the final rule, consistent with estimates for the proposed rule, are estimated at 64 hours per respondent annually. This estimate consists of two components: A reporting component and a records systems maintenance component. It is estimated that reports as described in Table A and Section B of proposed Appendix A will require 2 hours on average to complete. This estimate is based on a number of considerations including the relatively small number of items requested, the time necessary to complete other regulatory reports, and the reported volume of QFC activity evident within the existing population of institutions that would be subject to the rule. The time necessary to produce such reports could be substantially more than 2 hours for larger institutions with greater QFC volumes.

The FDIC may request the information required in Tables A1 and A2, and section B of Appendix A of the final rule relatively frequently or infrequently depending on such factors as the reported volume of an institution's QFC exposures, the number of QFC positions held by an institution (if known), and the near term failure prospects of an institution. For example, the FDIC would be more likely to request the information required to be maintained under this rule and Appendix A if the institution has a sizeable volume of reported QFC exposures (measured in carrying values or notational amounts as applicable) relative to that institution's assets or regulatory capital than an institution with a nominal volume of reported QFC exposures. Similarly, the FDIC likely would require more frequent reporting for institutions with low supervisory ratings. Based on the assumption that 12 reports would be required within a given year for such institutions, the total reporting component of the estimate would be 24 hours per respondent.

It is further estimated that institutions subject to these requirements will spend, on average, an estimated 10 hours per quarter, or 40 hours annually updating and maintaining the records and information required by section B of proposed Appendix A. Again, larger institutions with greater QFC volumes would likely spend considerably more time updating and maintaining records pertaining to QFC activities. Combining the records maintenance and reporting component estimates results in an estimated annual burden of 64 hours per respondent.

Section 371.1(c) of this final rule adds paperwork burden in the form of an application for an extension of time to comply with the requirements of the rule for institutions electing to make such a request. The FDIC estimates that approximately 20 institutions will file such applications and that the average time for preparing each request will be approximately 30 minutes.

In accordance with the requirements of the PRA, the FDIC has submitted a request to OMB for approval of its revised burden estimates. The revised burden for the collection of information is as follows:

Estimated Number of Respondents: 190 (recordkeeping/reporting); 20 (application).

Estimated Time per Response: 64 hours annually per respondent (24 hours—reporting; 40 hours—recordkeeping); 30 minutes (application).

Estimated Total Annual Burden: 12,160 hours (recordkeeping/reporting); 10 hours (application).

Total Annual Burden: 12,170 hours.

The FDIC has an ongoing interest in public comments on its burden estimates. Any such comments should be sent to the Paperwork Reduction Act Officer, FDIC Legal Division, 550 17th Street, NW., Washington, DC 20503. Written comments should address the accuracy of the burden estimates and ways to minimize burden, including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996, Public Law No. 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects

12 CFR Part 371

Administrative practice and procedure, Bank deposit insurance, Banking, Banks, Reporting and recordkeeping requirements, Savings associations, Securities, State non-member banks.

■ For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends Title 12, Chapter III, Subchapter B as set forth below:

■ 1. Add new part 371 to read as follows:

PART 371—RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Sec.
371.1 Scope, purpose and applicability.
371.2 Definitions.
371.3 Form, availability and maintenance of records.
371.4 Content of records.
371.5 Enforcement actions.
Appendix A to Part 371—File Structure for Qualified Financial Contract Records

Authority: 12 U.S.C. 1819(a)(Tenth); 1820(g); 1821(e)(8)(D) and (H); 1831g; 1831i, and 1831s.

§ 371.1 Scope, purpose, and applicability.

(a) *Scope.* This part applies to insured depository institutions that are in a troubled condition as defined in § 371.2(f).

(b) *Purpose.* This part establishes recordkeeping requirements with respect to qualified financial contracts for insured depository institutions that are in a troubled condition.

(c) *Applicability.* An insured depository institution shall comply with this part within 60 days after written notification by the institution's appropriate Federal banking agency or the FDIC that it is in a troubled condition under § 371.2(f). The FDIC may, at its discretion, grant one or more extensions of time for compliance with this part. No single extension shall be for a period of more than 30 days. An insured depository institution may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this part. The written request for an extension must contain a statement of the reasons why the institution cannot comply by the deadline for compliance.

§ 371.2 Definitions.

For purposes of this part:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Appropriate Federal banking agency* means the agency or agencies designated under 12 U.S.C. 1813(q).

(c) *Insured depository institution* means any bank or savings association, as defined in 12 U.S.C. 1813, the deposits of which are insured by the FDIC.

(d) *Position* means the rights and obligations of a person or entity as a party to an individual transaction under a QFC.

(e) *Qualified financial contracts* (QFCs) mean those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

(f) *Troubled condition* means for purposes of this part, any insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of ten billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Form, availability and maintenance of records.

(a) *Form and availability.* The records required to be maintained by an insured depository institution for QFCs under this part—

(1) Except for records that must be maintained through electronic files under Appendix A of this part, may be maintained in any form, including in an electronic file, provided that the records are updated at least daily;

(2) If the records are not maintained in written form, will be capable of being reproduced or printed in written form; and

(3) Will be made available upon written request by the FDIC immediately at the close of processing of the institution's business day, for a period provided in that written request.

(b) *Maintenance of records after the institution is no longer in a troubled condition.* Insured depository institutions that are in a troubled condition as defined in § 371.2(f) shall continue to maintain the capacity to produce records required under this part on a daily basis for a period of one year after the date that the appropriate Federal banking agency notifies the institution that it is no longer in a troubled condition as defined in § 371.2(f).

(c) *Maintenance of records after an acquisition of an institution that is in a troubled condition.* If an insured depository institution that has been determined by the appropriate Federal banking agency to be in a troubled condition ceases to exist as an insured depository institution as a result of a merger or a similar transaction into an insured depository institution that is not in a troubled condition immediately following the acquisition, the obligation to maintain records under this part on a daily basis will terminate when the institution in a troubled condition ceases to exist as a separately insured depository institution.

§ 371.4 Content of records.

For each QFC for which an insured depository institution is a party or is subject to a master netting agreement involving the QFC, that institution must maintain records as listed under Appendix A of this part.

§ 371.5 Enforcement actions.

Violating the terms or requirements of the recordkeeping requirements set forth in this part constitutes a violation of a regulation and subjects the participating entity to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818).

Appendix A to Part 371—File Structure for Qualified Financial Contract (QFC) Records

QFC Recordkeeping Requirements

A. Electronic Files To Be Maintained for QFCs

Any insured depository institution that is subject to this part (''institution'') must produce and maintain, in an electronic file in a format acceptable to the FDIC, the position level data found in Table A1 for all open positions in QFCs entered into by that institution or for which the institution is subject. To fulfill this requirement, not later than three business days after the institution's receipt of the written notification from the FDIC under § 371.1(c) of this part, the institution must provide the FDIC with (i) a directory of the electronic files that will be used by the institution to maintain the position level data found in Table A1 and (ii) a point of contact at the institution should the FDIC have follow-up questions concerning this information. In addition, for such data, the institution must produce at the close of processing of the institution's business day a report in a format acceptable to the FDIC that aggregates the current market value and the amount of QFCs by each of the fields in Table A1. The institution must produce the report within 60 days of a written notification by the FDIC for the period specified in the notification. Notwithstanding the above requirements, for institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC or the institution's appropriate Federal banking agency under part 371 and this Appendix, the data required in Table A1 are not required to be recorded and maintained in electronic form as would otherwise be required by this part, so long as all required information is capable of being updated on a daily basis. If at any time after receiving such notification an institution has twenty or more open QFC positions at any point in time, it must within 60 days after that first occurs, comply with all provisions of part 371.

TABLE A1—POSITION-LEVEL DATA

Field	Example	Data application
Unique position identifier and CUSIP, if available	999999999AU	Information needed to readily track and distinguish positions; unique trade confirmation number if available.
Portfolio location identifier (to identify the headquarters or branch where the position is booked).	XY12Z	Information needed to determine the headquarters or branch where the position is booked (see section B.1 of this Appendix).
Type of position (including the general nature of the reference asset or interest rate).	Interest rate swap, credit default swap, equity swap, foreign exchange forward, securities repurchase agreement, loan repurchase agreement.	Information needed to determine the extent to which the institution is involved in any particular QFC market.
Purpose of the position (if the purpose consists of hedging strategies, include the general category of the item(s) hedged).	Trading, hedging mortgage servicing, hedging certificates of deposit.	Information needed to determine the role of the QFC in the institution's business strategy.
Termination date (date the position terminates or is expected to terminate, expire, mature, or when final performance is required).	3/31/2010	Information needed to determine when the institution's rights and obligations regarding the position are expected to end.
Next call, put, or cancellation date	9/30/08	Information needed to determine when a call, put, or cancellation may occur with respect to a position.
Next payment date	9/30/08	Information needed to anticipate potential upcoming obligations.
Current market value of the position (as of the date of the file).	$995,000	Information needed to determine if the institution is in or out-of-the money with the counterparty.
Unique counterparty identifier	AB999C	Information needed to aggregate positions by counterparty.
Notional or principal amount of the position (this is the notional amount, where applicable).	$1,000,000	Information needed to help evaluate the position.
Documentation status of position	Affirmed, confirmed, or neither affirmed nor confirmed.	Information needed to determine reliability of a booked position and its legal status.

Also, the institution must maintain, in an electronic file in a format acceptable to the FDIC, the counterparty-level data found in Table A2 for all open positions in QFCs entered into by that institution. In addition, the institution must, at the FDIC's written request, produce immediately at the close of processing of the institution's business day, for a period provided in that written request, a report in a format acceptable to the FDIC that (i) itemizes, by each counterparty and by each of its affiliates, the data required in each field in Table A2, and (ii) aggregates by field, for each counterparty and its affiliates, the data required in each field in Table A2. Notwithstanding the above requirements, for institutions in a troubled condition with less than twenty open QFC positions upon receipt of the written notification from the FDIC or the institution's appropriate Federal banking agency under part 371 and this Appendix, the data required in Table A2 is not required to be recorded in electronic form as would otherwise be required by this part, so long as all required information is maintained and is capable of being updated on a daily basis. If at any time after receiving such notification an institution has twenty or more open QFC positions at any point in time, it must within 60 days after that first occurs, comply with all provisions of part 371.

TABLE A2—COUNTERPARTY-LEVEL DATA

Field	Example	Data Application
Unique counterparty identifier	AB999C	Information needed to aggregate positions by counterparty.
Current market value of all positions, as aggregated and, to the extent permitted under each applicable agreement, netted[29] (as of the date of the file).	($1,000,000)	Information needed to help evaluate the positions.
Current market value of all collateral and the type of collateral, if any, that the institution has posted against all positions with each counterparty.	$950,000; U.S. treasuries	Information needed to determine the extent to which the institution has provided collateral.
Current market value of all collateral and the type of collateral, if any, that the counterparty has posted against all positions.	$50,000; U.S. treasuries	Information needed to determine the extent to which the counterparty has provided collateral.
Institution's collateral excess or deficiency with respect to all of the institution's positions, as determined under each applicable agreement including thresholds and haircuts where applicable[30].	($25,000)	Information needed to determine the extent to which the institution has satisfied collateral requirements under each applicable agreement.
Counterparty's collateral excess or deficiency with respect to all of the institution's positions with each counterparty, as determined under each applicable agreement including thresholds and haircuts where applicable.	$50,000	Information needed to determine the extent to which the counterparty has satisfied collateral requirements under each applicable agreement.

TABLE A2—COUNTERPARTY-LEVEL DATA—Continued

Field	Example	Data Application
The institution's collateral excess or deficiency with respect to all the positions, based on the aggregate market value of the positions (after netting to the extent permitted under each applicable agreement) and the aggregate market value of all collateral posted by the institution against the positions, in whole or in part.	($50,000)	Information needed to determine the extent to which the institution's obligations regarding the positions may be unsecured.

[29] If one or more positions cannot be netted against others, they should be maintained as separate entries.
[30] If all positions are not secured by the same collateral, then separate entries should be maintained for each position or set of positions secured by the same collateral.

B. Other Files (in Written or Electronic Form) To Be Maintained for QFCs

Within 60 days after the written notification by the FDIC, the institution must, produce the following files at the close of processing of the institution's business day, for a period provided in that written notification.

1. Each institution must maintain the following files in written or electronic form:
- A list of counterparty identifiers, with the associated counterparties and contact information;
- A list of the affiliates of the counterparties that are also counterparties to QFC transactions with the institution or its affiliates, and the specific master netting agreements, if any, under which they are counterparties;
- A list of affiliates of the institution that are counterparties to QFC transactions where such transactions are subject to a master agreement that also governs QFC transactions entered into by the institution. Such list must specify (i) which affiliates are direct or indirect subsidiaries of the institution and (ii) the specific master agreements under which those affiliates are counterparties to QFC transactions; and
- A list of portfolio identifiers (see Table A1), with the associated booking locations.

2. For each QFC, the institution must maintain in a readily-accessible format all of the following documents:
- Agreements (including master agreements and annexes, supplements or other modifications with respect to the agreements) between the institution and its counterparties that govern the QFC transactions;
- Documents related to and affirming the position;
- Active or ''open'' confirmations, if the position has been confirmed;
- Credit support documents; and
- Assignment documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment(s) have been obtained or satisfied.

3. The institution must maintain:
- A legal-entity organizational chart, showing the institution, its corporate parent and all other affiliates, if any; and
- An organizational chart, including names and position titles, of all personnel significantly involved in QFC-related activities at the institution, its parent and its affiliates.
- Contact information for the primary contact person for purposes of compliance with this part by the institution.

4. The institution must maintain a list of vendors supporting the QFC-related activities and their contact information.

Dated at Washington, DC, this 16th day of December 2008.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–30221 Filed 12–19–08; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0842; Directorate Identifier 2008–NE–24–AD; Amendment 39–15771; AD 2008–26–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH 914 F Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Occurrence of cracks in the exhaust muffler in the area of the exhaust bottom and exhaust flange were reported, which could lead to toxic contamination inside the cabin.

We are issuing this AD to require actions to correct the unsafe condition on these products, which could result in carbon monoxide contamination in the cockpit, which can adversely affect the pilot, and possibly result in loss of control of the aircraft.

DATES: This AD becomes effective January 26, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *Richard.woldan@faa.gov;* telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 12, 2008 (73 FR 52932). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Occurrence of cracks in the exhaust muffler in the area of the exhaust bottom and exhaust flange were reported, which could lead to toxic contamination inside the cabin.

Comments

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

Suggestion To Pressurize the Muffler With Air To Detect Leaks

One commenter, a private citizen, suggests that we change the proposed AD to inspect for cracks by pressurizing the muffler with air and using a soap solution to detect leaks. The commenter states that this method would detect finer cracks than just a visual inspection would find.

We partially agree. The suggested inspection is likely more sensitive, but the visual inspections specified in the

proposed AD are sensitive enough to detect an exhaust leak that could create an unsafe condition. However, operators can request approval to use another inspection method instead of using the method specified in the AD, by requesting approval of an alternative method of compliance (AMOC). We did not change the AD.

Request To Allow Repair of a Cracked Muffler

The same commenter requests that we change the proposed AD to allow the repair of a cracked muffler instead of replacing the muffler. The commenter infers that this would be more cost effective.

We disagree. The cracks occurring in the mufflers are in weld areas that were part of the original manufacturing process. The muffler manufacturing process was changed to correct the cracking problem. A repair in the area of the original weld might not correct the unsafe condition and could make the muffler more susceptible to future cracking, thereby requiring continued inspections. However, operators can request approval of an AMOC for a muffler repair method, but operators would have to address the repair concerns mentioned previously. We did not change the AD.

Suggestion To Install a Carbon Monoxide (CO) Detector in the Cockpit

The same commenter suggests that operators install a CO detector in the cockpit to identify presence of harmful levels of CO. The commenter infers that this would provide an additional level of protection.

We disagree. The inspections specified in the proposed AD are adequate to detect an exhaust leak that could create an unsafe condition. Also, maintenance checks of the CO detector would be required to ensure its correct operation, if it was being relied on as a method to prevent the unsafe condition. We did not change the AD.

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 75 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $1,674 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $137,550. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–26–05 Bombardier-Rotax GmbH: (Formerly Rotax GmbH): Amendment 39–15771. Docket No. FAA–2008–0842; Directorate Identifier 2008–NE–24–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier-Rotax GmbH 914 F series reciprocating engines with engine exhaust muffler, part number (P/N) 979402 or 979404, with serial numbers (SNs) listed in Table 1 of this AD, installed. These engines are installed on, but not limited to, Aeromot-Industria Mecanico Metalurgica, AMT–300 (Turbo Ximango Shark), Diamond Aircraft Industries, HK 36 TTS, HK 36 TTC, HK 36 TTC–ECO, and Stemme GmbH & Co. KG, S10–VT series powered sailplanes.

TABLE 1—AFFECTED EXHAUST MUFFLERS BY GROUP, P/N, AND SN

Group	P/N	SN
(1) A	979402	02.0001 through 02.0322, 03.0002, 03.0005, 03.0011, 03.0015, 03.0017, 03.0028, 03.0029, 03.0037, 03.0038, 03.0040, 03.0050, 03.0069, 03.0072, 03.0073, 03.0078, 03.0080 through 03.0086, 03.0088 through 03.0090, 03.0092 through 03.0101, 03.0103, and 03.0108.
(2) B	979402	03.0001, 03.0003, 03.0004, 03.0006, 03.0007 through 03.0010, 03.0012 through 03.0014, 03.0016, 03.0018 through 03.0027, 03.0030 through 03.0036, 03.0039, 03.0041 through 03.0049, 03.0051 through 03.0068, 03.0070, 03.0071, 03.0074 through 03.0077, 03.0079, 03.0087, 03.0091, 03.0102, and 03.0104 through 03.0107.
	979404	03.0200 through 04.0799.

Reason

(d) Occurrence of cracks in the exhaust muffler in the area of the exhaust bottom and exhaust flange were reported, which could lead to toxic contamination inside the cabin.

We are issuing this AD to prevent carbon monoxide contamination in the cockpit, which can adversely affect the pilot, and possibly result in loss of control of the aircraft.

Actions and Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Visual Inspection

Group A Exhaust Mufflers

(f) For exhaust mufflers specified in Group A of Table 1 of this AD, within 50 hours of operation after the effective date of this AD, do the following:

(1) Perform a visual inspection around the fillet weld of the exhaust inlet flange and around the weld of the exhaust outlet for evidence of leakage or cracks. Information on inspecting the exhaust muffler can be found in Bombardier-Rotax GmbH 914 F Service Bulletin (SB) No. SB–914–028 R1, dated November 8, 2004.

(2) If you see evidence of an exhaust leak or cracks, replace the exhaust muffler.

Group B Exhaust Mufflers

(g) For exhaust mufflers specified in Group B of Table 1 of this AD, within 50 hours of operation after the effective date of this AD, do the following:

(1) Perform a visual inspection around the weld of the exhaust outlet for evidence of leakage or cracks. Information on inspecting the exhaust muffler can be found in Bombardier-Rotax GmbH 914 F Service Bulletin No. SB–914–028 R1, dated November 8, 2004.

(2) If you see evidence of an exhaust leak or cracks, replace the exhaust muffler.

Repetitive Visual Inspections

(h) Within 50 hours of operation since the last inspection, perform the actions specified in paragraphs (f)(1) through (f)(2) and (g)(1) through (g)(2) of this AD.

FAA AD Differences

(i) None.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2006–0127, dated May 18, 2006, and Bombardier-Rotax GmbH 914 F Service Bulletin No. SB–914–028 R1, dated November 8, 2004, for related information. Contact Bombardier-Rotax GmbH, Gunskirchen, Austria; telephone: 7246–601–423; fax: 7246–601–760, or go to: *http://www.rotax-aircraft-engines.com,* for a copy of this service bulletin.

(l) Contact Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; telephone (781) 238–7136; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(m) None.

Issued in Burlington, Massachusetts, on December 11, 2008.

Peter A. White,

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

[FR Doc. E8–30049 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24261; Directorate Identifier 2006–NE–12–AD; Amendment 39–15768; AD 2008–26–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CT7–8A Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain GE CT7–8A turboshaft engines. That AD currently requires initial and repetitive inspections of the electrical chip detectors for the No. 3 bearing. This AD requires removing from service certain GE CT7–8A turboshaft engines within 6,200 cycles-since-new. This AD results from investigation for the root causes of two failures of the No. 3 bearing. We are issuing this AD to prevent failure of the No. 3 bearing due to contamination by aluminum oxide, which could result in a possible in-flight shutdown of the engines and loss of control or forced landing of the aircraft.

DATES: This AD becomes effective January 26, 2009.

ADDRESSES: You can get the service information identified in this AD from General Electric Aircraft Engines CT7 Series Turboshaft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–6726; fax (781) 594–1583.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov;* telephone (731) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2006–06–51, Amendment 39–14566 (71 FR 19627, April 17, 2006), with a proposed AD. The proposed AD applies to certain GE CT7–8A turboshaft engines. We published the proposed AD in the **Federal Register** on March 19, 2008 (73 FR 14731). That action proposed to:

- Delete the requirements to inspect the electrical chip detector, and
- Require removing any engine that has a serial number (SN) listed in Table

1 of the proposed AD within 6,200 cycles-since-new (CSN) unless the front frame was flushed and the No. 3 bearing replaced, and

• Prohibit installing any engine that has a SN listed in Table 1 of the proposed AD unless the front frame was flushed and the No. 3 bearing replaced.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Changes to Contact Information for Service Information

One commenter, GE, asks that we change a typographical error in the contact information for the service information from Turboprop to Turboshaft. They also inform us they changed the contact telephone and fax numbers.

We agree. We changed Turboprop to Turboshaft, and we changed the contact telephone and fax numbers to (781) 594–6726 and (781) 594–1583 respectively.

Request for Changes to Actions Since AD 2006–06–51 Was Issued

The same commenter asks us to change the second bulleted item in Actions Since AD 2006–06–51 Was Issued section and to delete the third bulleted item.

We partially agree. Adding ''within 6,200 cycles-since-new (CSN) unless * * * replaced'' is more clear. However, that section appears in the preamble of the NPRM only. The final rule doesn't contain that section so we can't make the requested change to the preamble.

Request To Remove the Prohibition Against Installing Engines After the Effective Date of This AD

The same commenter asks us to remove the paragraph prohibiting reinstallation of an engine until this AD has been complied with. The commenter states there should be no restriction on reinstalling an engine already in the field that might have been temporarily removed for maintenance or used as a spare engine. The commenter states when these engines are sent to an Engine Overhaul Shop (within 6,200 CSN) they will get their front frame flushed and No. 3 bearing replaced. Therefore, within the 6,200 CSN compliance requirement, there should be no restriction to reinstalling the engines listed in Table 1 of the proposed AD.

We agree. We have deleted the installation prohibition from the regulatory text of the final rule.

Request To Reference the Latest Revision of Service Bulletin CT7–8 S/B 72–0017

The same commenter asks us to change the Relevant Service Information section and the Related Information paragraph to include Service Bulletin (SB) CT7–8 S/B 72–0017, Revision 01, dated February 15, 2008, and SB CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008. The commenter states that GE issued SB CT7–8 S/B 72–0017, Revision 01, dated February 15, 2008, and SB CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008, after we issued the NPRM.

We partially agree. We added SB CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008, to the Related Information paragraph (i) and changed paragraph (g) to state ''remove the engine from service and flush the front frame and replace the No. 3 bearing. GE Aircraft Engines Service Bulletin No. CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008 or earlier revision, contains information on flushing the front frame and replacing the No. 3 bearing.'' However, the Relevant Service Information section appears in the preamble of the NPRM only. The final rule doesn't contain that section so we can't make the requested change to the preamble.

Request To Add Compliance Times to the Related Service Information Paragraph

The same commenter asks us to change the Related Service Information paragraph to include the compliance time of ''within 6,200 CSN or at the next shop visit, whichever occurs first.'' The commenter recommends inserting this information to provide a brief explanation of the intent of GE CT7–8 Service Bulletin 72–0017.

We don't agree. We already specify the compliance times in the regulatory text. The purpose of the Related Service Information paragraph is to provide a user with additional information that they can use when complying with the regulatory requirements of the AD.

Request To Remove an Engine SN From Table 1 of the AD

The same commenter asks us to remove engine SN 947266 from Table 1 of the AD. The commenter states that they added that engine to the ''completed compliance list'' in Revision 01 of GE Aircraft Engines CT7–8 Service Bulletin 72–0017.

We agree. We removed engine SN 947266 from Table 1 of the AD.

Request To Replace the Phrase ''Remove the Engine From Service''

The same commenter asks us to replace the phrase ''remove the engine from service'' in paragraph (g) with ''Comply with GE Aircraft Engines CT7–8 Service Bulletin 72–0017 Rev 00 or Rev 01 or Rev 02, unless the front frame was flushed and the No. 3 bearing was replaced previously.'' The commenter recommends the change to clarify the requirements by stating that each engine listed in Table 1 of the AD must comply with the requirements of GE Aircraft Engines CT7–8 Service Bulletin 72–0017 within 6,200 CSN.

We partially agree. We determined paragraph (g) is clear because it states the actions apply to engines with SNs listed in Table 1 and because paragraph (e) requires performing the actions unless the actions have already been done. However, we did change paragraph (g) from ''within 6,200 cycles-since new, remove engine from service'' to ''within 6,200 cycles-since new, remove the engine from service and flush the front frame and replace the No. 3 bearing. GE CT7–8 Shop Manual, GEK 10517, and GE Aircraft Engines Service Bulletin No. CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008, or earlier revision, contain information on flushing the front frame and replacing the No. 3 bearing.'' We also added a new paragraph (h) to prohibit installing any No. 3 bearing removed as required by paragraph (g).

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 29 engines installed on helicopters of U.S. registry. We also estimate that it

will take about 66.0 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $3,476 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $253,924.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14566 (71 FR 19627, April 17, 2006) and by adding a new airworthiness directive, Amendment 39–15768, to read as follows:

2008–26–02 General Electric Company: Amendment 39–15768. Docket No. FAA–2006–24261; Directorate Identifier 2006–NE–12–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 26, 2009.

Affected ADs

(b) This AD supersedes AD 2006–06–51, Amendment 39–14566.

Applicability

(c) This AD applies to General Electric Company (GE) CT7–8A turboshaft engines that have a serial number (SN) listed in Table 1 of this AD. These engines are installed on, but not limited to, Sikorsky S92 helicopters.

TABLE 1—AFFECTED ENGINES BY SERIAL NUMBER

Engine Serial Number					
947205	947215	947230	947243	947254	947265
947206	947217	947232	947244	947255	947274
947207	947218	947233	947245	947256	947277
947208	947219	947235	947247	947258	947278
947209	947220	947238	947248	947260	947279
947210	947221	947240	947249	947261	947280
947211	947223	947241	947250	947262	947284
947212	947225	947242	947253	947263	947285
947214	947228				

Unsafe Condition

(d) This AD results from investigation for the root causes of two failures of the No. 3 bearing. We are issuing this AD to prevent failure of the No. 3 bearing due to contamination by aluminum oxide, which could result in a possible in-flight shutdown of the engines and loss of control or forced landing of the aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) No further action is required if:

(1) Your engine has a SN that is not listed in Table 1 of this AD, or

(2) Your engine has a SN listed in Table 1 of this AD, but the engine log specifies that the front frame was flushed and the No. 3 bearing was replaced.

Engines With SNs listed in Table 1 of This AD

(g) For engines with a SN listed in Table 1 of this AD, within 6,200 cycles-since-new, remove the engine from service and flush the front frame and replace the No. 3 bearing. GE CT7–8 Shop Manual, GEK 10517, contains information on replacing the No. 3 bearing and GE Aircraft Engines Service Bulletin No. CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008, or earlier revision, contains information on flushing the front frame and replacing the No. 3 bearing.

Prohibition Against Reinstalling a No. 3 Bearing

(h) After the effective date of this AD, do not install any No. 3 bearing removed as a requirement of paragraph (g) of this AD.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) GE CT7–8 Shop Manual, GEK 10517, and GE Aircraft Engines Service Bulletin No. CT7–8 S/B 72–0017, Revision 02, dated May 14, 2008 and earlier revisions pertain to the subject of this AD. Contact General Electric Aircraft Engines CT7 Series Turboshaft

Engines, 1000 Western Ave., Lynn, MA 01910; telephone (781) 594–6726; fax (781) 594–1583, for a copy of this service information.

(k) Contact Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (731) 238–7133; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) None.

Issued in Burlington, Massachusetts, on December 9, 2008.

Peter A. White,

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

[FR Doc. E8–29722 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0005; Airspace Docket No. 08–AAL–1]

Revision of Class E Airspace; Ruby, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Monday, November 10, 2008 (73 FR 66515). Airspace Docket No. 08–AAL–1.

DATES: *Effective Date:* 0901 UTC, January 15, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket No. FAA–2008–0005, Airspace Docket No. 08–AAL–1, published on Monday, November 10, 2008 (73 FR 66515), revised Class E airspace at Ruby, AK. An error was discovered in the airspace description defining the lateral confines of the Class E (700 foot) description. The controlled airspace extending to the northeast along the 051° bearing from the airport will only cover 4 miles either side of the 051° bearing (instead of 8 miles), and will only cover 50% of what was described. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Monday, November 10, 2008 (73 FR 66515), FAA Docket No. 2008–0005, Airspace Docket No. 08–AAL–1, page 66516, column 2 is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Ruby, AK [Corrected]

Ruby, Ruby Airport, AK

(Lat. 64°43′38″ N., long. 155°28′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ruby Airport, AK, and within 4 miles either side of the 051° bearing from the Ruby Airport, AK, extending from the 6.4-mile radius to 20.3 miles northeast of the Ruby Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Ruby Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 4, 2008.

Anthony M. Wylie

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–30170 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0998; Airspace Docket No. 08–AAL–29]

Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Ketchikan, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Seven SIAPs, two Standard Instrument Departure Procedures (SIDs) and a textual Obstacle Departure Procedure (ODP) are being amended or drafted for the Ketchikan International Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Ketchikan International Airport, Ketchikan, AK.

DATES: *Effective Date:* 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 17, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Ketchikan, AK (73 FR 61749). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing instrument procedures for the Ketchikan International Airport. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Ketchikan International Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed with the following exception. The airport location has been updated to reflect new data obtained in a recent survey.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Ketchikan International Airport, Alaska. This Class

E airspace is revised to accommodate aircraft executing amended instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Ketchikan International Airport, Ketchikan, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Ketchikan International Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Ketchikan, AK [Revised]

Ketchikan, Ketchikan International Airport, AK
(Lat. 55°21′15″ N., long. 131°42′40″ W.)
Ketchikan Localizer
(Lat. 55°20′41″ N., long. 131°41′43″ W.)

That airspace extending upward from 700 feet above the surface within 2 miles either side of the Ketchikan Localizer southeast course, extending from the Ketchikan International Airport, AK, to 9 miles southeast of the Ketchikan International Airport, AK, and within 1.9 miles either side of the Ketchikan Localizer northwest course, extending from the Ketchikan International Airport, AK, to 10 miles northwest of the Ketchikan International Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 4, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–30171 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0999; Airspace Docket No. 08–AAL–30]

Revision of Class E Airspace; Toksook Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Toksook Bay, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). One SIAP is being amended for the Toksook Bay Airport. Additionally, one textual Obstacle Departure Procedure (ODP) is being amended. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Toksook Bay Airport, Toksook Bay, AK.

DATES: *Effective Date:* 0901 UTC, March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Friday, October 17, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Toksook Bay, AK (73 FR 61750). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing instrument procedures for the Toksook Bay Airport. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Toksook Bay Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Toksook Bay Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing amended instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Toksook Bay Airport, Toksook Bay, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Toksook Bay Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Toksook Bay, AK [Revised]

Toksook Bay, Toksook Bay Airport, AK
(Lat. 60°32′29″ N., long. 165°05′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Toksook Bay Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Toksook Bay Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 4, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–30014 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710, 711, 712, 716, 718, 719, and 720

[Docket No. 080625781–8790–01]

RIN 0694–AE39

Chemical Weapons Convention Regulations: Additions to the List of States Parties; Updates to Contact Information for the Treaty Compliance Division; Editorial Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Chemical Weapons Convention Regulations (CWCR) by updating the address for submitting declarations, reports, and advance notifications under the CWCR and for submitting chemical determination requests, and requests to obtain the forms needed to complete the declarations and reports. This final rule also updates the telephone and facsimile numbers for contacting, or providing information to, BIS's Treaty Compliance Division (TCD), which administers the requirements contained in the CWCR. In addition, this rule updates the e-mail addresses in the CWCR for submitting chemical determination requests or requests for BIS to provide written interpretations of CWCR requirements. These changes are being implemented by BIS to reflect the recent relocation of TCD.

This rule also updates the list of countries that currently are States Parties to the CWC by adding ''Congo (Republic of the),'' ''Guinea-Bissau,'' and ''Lebanon,'' which recently became States Parties.

Finally, this rule revises a number of references in the CWCR to the Export Administration Regulations (EAR) to indicate the correct legal citation for the EAR.

DATES: This rule is effective December 22, 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–AE39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: publiccomments@bis.doc.gov.* Include ''RIN 0694–AE39'' 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:* Willard Fisher, 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–AE39.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & 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–AE39)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, advance notifications, chemical determinations, recordkeeping, inspections and facility agreements, contact the Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (202) 482–1001; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends the Chemical Weapons Convention Regulations (CWCR) (15 CFR Parts 710–721) by updating the address for submitting declarations, reports, and advance notifications that are required under the CWCR and for submitting chemical determination requests, as well as requests for obtaining the forms needed to complete declarations and reports. This final rule also updates the telephone and facsimile numbers indicated in the CWCR for contacting, or providing information to, the Treaty Compliance Division (TCD), Office of Nonproliferation and Treaty Compliance, which is the organization within the Bureau of Industry and Security (BIS) that administers the requirements contained in the CWCR. In addition, this rule updates the e-mail addresses in the CWCR that may be used to submit chemical determination requests or requests for BIS to provide written interpretations of CWCR requirements by changing the domain for these addresses from ''cwc.gov'' to ''bis.doc.gov.'' These changes are being implemented by BIS to reflect the recent relocation of TCD to new office space.

This rule also amends Supplement No. 1 to Part 710 of the CWCR (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding ''Congo (Republic of the),'' ''Guinea-Bissau,'' and ''Lebanon,'' which became States Parties to the CWC on January 2, 2008, June 18, 2008, and December 20, 2008, respectively. As a result of this change, the CWCR declaration and reporting requirements for these two countries will be the same as those that apply to other States Parties.

Finally, this rule revises a number of references in the CWCR to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) to indicate the correct legal citation for the EAR. Previously, the citation for the EAR read ''(15 CFR Parts 730 through 799).'' The EAR, as well as the International Traffic in Arms Regulations (ITAR), are referenced in the CWCR because both contain certain CWC-related requirements in addition to those described in the CWCR.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0091 (Chemical Weapons Convention—Declaration and Report Forms), which carries burden hour estimates of 10.6 hours for Schedule 1 Chemicals (including declarations, reports, and amendments), 11.9 hours for Schedule 2 chemicals (including declarations, reports, and amendments), 2.5 hours for Schedule 3 chemicals (including declarations, reports, and amendments), 5.3/5.1/5.1 hours for unscheduled discrete organic chemicals (depending upon whether an *Annual Declaration on Past Activities or an amendment thereto*, a *No Changes Authorization Form*, or a *Change in Inspection Status Form*, respectively, is required), 1.7 hours for compliance review requests, and 0.17 hours for Schedule 1 notifications. BIS anticipates that this rule will not change these burden hour estimates, nor will it change the total estimated burden hours for the approved collection (*i.e.*, 4,501.6 burden hours).

Comments are invited on: (i) Whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the information collection burden; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for the amendments contained in this rule that involve updates to contact information for the Treaty Compliance Division. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for those changes because those revisions relate to rules of agency organization, procedure, or practice.

BIS 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 for the corrections to references to the Export Administration Regulations (EAR) (15 CFR Parts 730–774), because prior notice and the opportunity for public comment are unnecessary. These revisions are administrative in nature and do not affect the rights and obligations of the public. Since these revisions do not constitute substantive changes to the CWCR, it is unnecessary to provide notice and opportunity for public comment. For the reason stated above, BIS finds good cause to waive the 30-day delay in effectiveness required by 5 U.S.C. 553(d) for the revisions to the references to the EAR.

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, do not apply to the amendments contained in this rule that involve the addition of three countries (*i.e.*, Republic of the Congo, Guinea-Bissau, and Lebanon) to the list of CWC States Parties in Supplement No. 1 to part 710 of the CWCR, because these revisions involve

a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)).

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule 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. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. You may submit comments, identified by RIN 0694–AE39, to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

15 CFR Part 718

Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Penalties, violations.

■ Accordingly, Parts 710, 711, 712, 716, 718, 719, and 720 of the Chemical Weapons Convention Regulations (15 CFR Parts 710–721) are amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for 15 CFR Part 710 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§ 710.1 [Amended]

■ 2. Section 710.1 is amended:

■ a. By removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' from the fourth sentence of definition of ''*Advance Notification*'' and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''; and

■ b. By removing the parenthetical phrase ''(15 CFR parts 730–799)'' from the definition of ''EAR'' and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

§ 710.6 [Amended]

■ 3. Section 710.6 is amended by removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' from the second sentence and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

Supplement No. 1 to Part 710—[Amended]

■ 4. Supplement No. 1 to Part 710 is amended:

■ a. By revising the undesignated center heading ''List of States Parties as of November 1, 2006'' to read ''List of States Parties as of December 20, 2008'';

■ b. By adding in alphabetical order the countries ''Congo (Republic of the)'', ''Guinea-Bissau'', and ''Lebanon''; and

■ c. By removing the parenthetical phrase ''(15 CFR parts 730–799)'' from the first footnote that follows the List of States Parties and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

PART 711—[AMENDED]

■ 5. The authority citation for 15 CFR Part 711 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

■ 6. Section 711.4 is amended by revising the second sentence in paragraph (a)(1) and by revising paragraph (b) to read as follows:

§ 711.4 Assistance in determining your obligations.

(a) * * *

(1) * * * Such requests must be sent via facsimile to (202) 482–1731, e-mailed to *cdr@bis.doc.gov*, or mailed to the Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, and must be marked ''Attn: Chemical Determination.'' * * *

* * * * *

(b) *Other inquiries.* If you need assistance in interpreting the provisions of the CWCR or need assistance with declaration, forms, reporting, advance notification, inspection or facility agreement issues, contact BIS's Treaty Compliance Division by phone at (202) 482–1001. If you require a response from BIS in writing, submit a detailed request to BIS that explains your question, issue, or request. Send the request to the address or facsimile included in paragraph (a) of this section, or e-mail the request to *cwcqa@bis.doc.gov.* Your request must be marked, ''ATTN: CWCR Assistance.''

§ 711.6 [Amended]

■ 7. Section 711.6 is amended by removing the phrase ''1555 Wilson Blvd., Suite 700, Arlington, VA 22209–2405, Telephone: (703) 605–4400'' from the first sentence of paragraph (a) and adding, in its place, the phrase ''Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482–1001''.

■ 8. Section 711.7 is revised to read as follows:

§ 711.7 Where to submit declarations, reports and advance notifications.

Declarations, reports and advance notifications required by the CWCR must be sent either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482–1001. Specific types of declarations and reports and due dates are outlined in Supplement No. 2 to parts 712 through 715 of the CWCR.

§ 711.8 [Amended]

■ 9. Section 711.8 is amended by removing the telephone number ''(703) 235–1335'' from the first sentence of paragraph (b)(2)(iv)(A) and adding, in its place, the telephone number ''(202) 482–1001''.

PART 712—[AMENDED]

■ 10. The authority citation for 15 CFR Part 712 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950, as amended by E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§ 712.2 [Amended]

■ 11. Section 712.2(b) is amended by removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' from the first sentence of Note 2 to § 712.2(b) and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

■ 12. Section 712.6 is amended by revising paragraph (a)(2) to read as follows:

§ 712.6 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.

(a) * * *

(2) Send the advance notification either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, and mark it ''Attn: Advance Notification of Schedule 1 Chemical [Export] [Import].''

* * * * *

PART 716—[AMENDED]

■ 13. The authority citation for 15 CFR Part 716 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§ 716.6 [Amended]

■ 14. Section 716.6 is amended by removing the phrase ''1555 Wilson Blvd., Suite 700, Arlington, VA 22209, Telephone: (703) 605–4400'' from paragraph (d) and adding, in its place, the phrase ''Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Telephone: (202) 482–1001''.

PART 718—[AMENDED]

■ 15. The authority citation for 15 CFR Part 718 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§ 718.3 [Amended]

■ 16. Section 718.3 is amended by removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' from paragraphs (a) and (b)(1) and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

PART 719—[AMENDED]

■ 17. The authority citation for 15 CFR Part 719 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR 1994, Comp., p. 950; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§ 719.1 [Amended]

■ 18. Section 719.1(a) is amended by removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' from the Note to § 719.1(a) and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)''.

PART 720—[AMENDED]

■ 19. The authority citation for 15 CFR Part 720 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

§§ 720.2, 720.3, and 720.4 [Amended]

■ 20. Part 720 is amended by removing the parenthetical phrase ''(15 CFR parts 730 through 799)'' and adding, in its place, the parenthetical phrase ''(15 CFR parts 730 through 774)'' in the following places:

a. Section 720.2(a), second sentence;

b. Section 720.3(b), fourth sentence; and

c. Section 720.4, first sentence.

Dated: December 16, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–30384 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–000]

Standards of Conduct for Transmission Providers

December 15, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting an extension of time and providing notice of change in personnel.

SUMMARY: On October 16, 2008, the Commission issued Order No. 717, which revised the Standards of Conduct for natural gas and electric transmission providers.[1] Order No. 717 became effective on November 26, 2008, 30 days after publication in the **Federal Register**. According to Order No. 717, transmission providers must be in full compliance with the Standards by that date, with the exception of the posting and training requirements, with which transmission providers must be in full compliance no later than 60 days from the date of publication in the **Federal Register**, or December 26, 2008. On November 17, 2008, the Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA) jointly filed a motion for extension of certain compliance deadlines under Order No. 717. This order grants EEI's and INGAA's request to extend the time for compliance with 18 CFR 358.8(c)(1), 358.7(d), 358.7(h), and 358.8(b)(2) to January 30, 2009; and for a grace period until February 27, 2009 for training of new employees hired before January 30, 2009. In addition, this order provides notice of a change in personnel.

DATES: *Compliance Date:* The time for compliance with 18 CFR 358.8(c)(1), 358.7(d), 358.7(h), and 358.8(b)(2) is extended to January 30, 2009 and new employees hired before January 30, 2009 shall be trained by February 27, 2009.

FOR FURTHER INFORMATION CONTACT: Mason Emnett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6540.

SUPPLEMENTARY INFORMATION: 1. On October 16, 2008, the Commission issued Order No. 717, which revised the Standards of Conduct for natural gas and electric transmission providers.[2] The Commission stated that Order No. 717 would become effective 30 days after publication in the **Federal Register**, that is, November 26, 2008.[3] According to the Order, transmission providers must be in full compliance with the Standards by that date, with the exception of the posting and training requirements, with which transmission providers must be in full compliance no later than 60 days from the date of publication in the **Federal Register**, or December 26, 2008.[4]

2. On November 17, 2008, the Edison Electric Institute (EEI) and the Interstate Natural Gas Association of America (INGAA) jointly filed a motion for extension of certain compliance deadlines under Order No. 717 to January 30, 2009. Specifically, EEI and INGAA request an extension of (1) the deadline to complete revisions to compliance procedures and training

[1] *Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) (Order No. 717).

[2] *Standards of Conduct for Transmission Providers,* Order No. 717, 73 Fed. Reg. 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) (Order No. 717).

[3] *Id.* P 330.

[4] *Id.*

materials; (2) the compliance deadline for transmission providers to post the written procedures implementing the Standards on their Internet Web sites under section 358.7(d); (3) the compliance deadline for distribution of procedures to the employees listed in section 358.8(b)(2); and, (4) the compliance deadline for recordation of information exchanges under section 358.7(h). EEI and INGAA further request an initial grace period until February 27, 2009 for the training of new employees that are hired before the transmission provider develops the new training materials and procedures. Thus, the deadline for training employees hired before January 30, 2009 would be extended to February 27, 2009, but all new hires on or after January 30, 2009 would receive training within 30 days of their employment date.

3. EEI and INGAA state that a significant commitment of time and resources is necessary to analyze the changes made under Order No. 717, to revise procedures and training materials, to implement the changes in the compliance programs, and to train new employees. And, because the current deadlines fall during the end-of-year holiday season, many employees that are needed to complete these tasks and meet these compliance deadlines have already committed to take annual leave over the holidays.

4. The Commission recognizes that due to the publication date of Order No. 717 in the **Federal Register**, the current compliance deadlines do fall during the end-of-year holiday season, making it difficult for companies to have the staff and resources available to meet the compliance requirements of the Order. Accordingly, upon consideration of the concerns raised by EEI and INGAA, the Commission will grant EEI's and INGAA's requests (1) to extend the time for compliance with 18 CFR 358.8(c)(1), 358.7(d), 358.7(h), and 358.8(b)(2) to January 30, 2009; and (2) for a grace period until February 27, 2009 for training of new employees hired before January 30, 2009.

5. As a separate matter, this order is intended to serve as a notice to participants in this proceeding that they should contact for now Mason Emnett in the Office of General Counsel (OGC) at 202–502–6540 for all future requests for further information on Order No. 717, and should also watch for future notices of other OGC contacts. Likewise, any inquiries regarding the interpretation of the Standards should be directed to the Commission's Help Desk [5] and should not be directed to the Commission's Enforcement Hotline, unless the caller wishes to report a violation of the Standards.

The Commission Orders

The Commission hereby grants the requested extensions of certain compliance deadlines in Order No. 717, as discussed in the body of the order.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30257 Filed 12–19–08; 8:45 am]

BILLING CODE 6717–01–P

[5] Questions can be submitted to the Help Desk via an online form available at *http://www.ferc.gov/contact-us/compliance-help-desk.asp.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0203]

RIN 1625–AA87

Security Zone; Escorted Vessels in Captain of the Port Zone Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is making permanent an interim rule establishing a security zone around any vessel being escorted by one or more Coast Guard assets, or other Federal, State, or local law enforcement assets within the Captain of the Port Zone Jacksonville, FL. This action is necessary to ensure the safe transit of escorted vessels as well as the safety and security of personnel and port facilities. No vessel or person is allowed inside the security zone unless authorized by the Captain of the Port Jacksonville, FL or a designated representative.

DATES: This rule is effective January 21, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0203 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0203 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Coast Guard Sector Jacksonville Prevention Department, 4200 Ocean Street, Atlantic Beach, Florida, 32233, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Mark Gibbs at Coast Guard Sector Jacksonville Prevention Department, Florida. Contact telephone is 904–564–7563. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 19, 2008, we published an Interim Rule with request for comments (IR) entitled Security Zone; Escorted Vessels in Captain of the Port Zone Jacksonville, Florida in the **Federal Register** (73 FR 28707). We received one letter commenting on the rule. No public meeting was requested, and none was held.

Background and Purpose

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13,273, 67 FR 56215, Sept. 3, 2002 and 73 FR 54489, Sept. 22, 2008). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely.

King's Bay, GA, and the Ports of Jacksonville, FL, and Canaveral, FL frequently receive vessels that require additional security, including, but not limited to, vessels that carry sensitive Department of Defense cargoes, vessels that carry dangerous cargoes, and foreign naval vessels. The Captain of the Port (COTP) Jacksonville has determined that these vessels have a significant vulnerability to subversive activity by vessels or persons or, in

some cases, themselves pose a risk to a port and the public, within the Jacksonville Captain of the Port Zone, as described in 33 CFR 3.35–20. This rule enables the COTP Jacksonville to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zones for each escorted vessel.

Discussion of Comments and Changes

On May 19, 2008, the Coast Guard published the IR that established a security zone around any vessel being escorted by one or more Coast Guard assets, or other Federal, State, or local law enforcement assets within the Captain of the Port Zone Jacksonville, FL. One letter was received in response to the IR. The comments in the letter are beyond the scope of this rulemaking, but are relevant to another ongoing rulemaking: Security Zone; West Basin, Port Canaveral Harbor, Cape Canaveral, FL (Docket No. USCG–2008–0752). The Coast Guard will take these comments into consideration for that rulemaking.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports within the Captain of the Port Zone Jacksonville.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Broadcast Notice to Mariners. Where such space is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the IR we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

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

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard adopts the interim rule published at 73 FR 28707, May 19, 2008, as final without change.

Dated: November 18, 2008.

P. F. Thomas,

Captain, U.S. Coast Guard, Captain of the Port Zone Jacksonville, Florida.

[FR Doc. E8–30387 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–12 and CP2009–14; Order No. 149]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail and Priority Mail Contract 2 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 74213 (December 5, 2008).

I. Background

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On November 25, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 2 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail & Priority Mail Contract 2 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–12.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–14.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 2 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the Mail Classification Schedule product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted Express Mail & Priority Mail Contract 2, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 143, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative.[8] No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail & Priority Mail Contract 2 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 142, Notice and Order Concerning Express Mail & Priority Mail Contract 2 Negotiated Service Agreement, December 2, 2008 (Order No. 143).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 10, 2008 (Public Representative Comments).

accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 2 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 2 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, paragraph (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at paragraph (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at paragraph (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 2 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's financial analysis shows that Express Mail & Priority Mail Contract 2 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. The contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Commission notes that in evaluating costs under a prospective contract compared to the average, the Postal Service should take into account all departures from average cost that may be due to services provided under the contract. The failure to do so, while having no material effect on the underlying financial analysis of the contract in this instance, hampers the timely review of the Postal Service's financial analysis. *See also* PRC Order No. 138, November 20, 2008, at 6–7.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 2 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail & Priority Mail Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 2 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart a of Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication

Confirm
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Negotiated Service Agreements
HSBC North America Holdings Inc. Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Market Dominant Product Descriptions
First-Class Mail [Reserved for Class Description]
Single-Piece Letters/Postcards [Reserved for Product Description]
Bulk Letters/Postcards [Reserved for Product Description]
Flats [Reserved for Product Description]
Parcels [Reserved for Product Description]
Outbound Single-Piece First-Class Mail International [Reserved for Product Description]
Inbound Single-Piece First-Class Mail International [Reserved for Product Description]
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]
High Density and Saturation Letters [Reserved for Product Description]
High Density and Saturation Flats/Parcels [Reserved for Product Description]
Carrier Route [Reserved for Product Description]
Letters [Reserved for Product Description]
Flats [Reserved for Product Description]
Not Flat-Machinables (NFMs)/Parcels [Reserved for Product Description]
Periodicals [Reserved for Class Description]
Within County Periodicals [Reserved for Product Description]
Outside County Periodicals [Reserved for Product Description]
Package Services [Reserved for Class Description]
Single-Piece Parcel Post [Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]
Bound Printed Matter Flats [Reserved for Product Description]
Bound Printed Matter Parcels [Reserved for Product Description]
Media Mail/Library Mail [Reserved for Product Description]
Special Services [Reserved for Class Description]
Ancillary Services [Reserved for Product Description]
Address Correction Service [Reserved for Product Description]
Applications and Mailing Permits [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]
Certified Mail [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]
Delivery Confirmation [Reserved for Product Description]
Insurance [Reserved for Product Description]
Merchandise Return Service [Reserved for Product Description]
Parcel Airlift (PAL) [Reserved for Product Description]
Registered Mail [Reserved for Product Description]
Return Receipt [Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]
Shipper-Paid Forwarding [Reserved for Product Description]
Signature Confirmation [Reserved for Product Description]
Special Handling [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
Address List Services [Reserved for Product Description]
Caller Service [Reserved for Product Description]
Change-of-Address Credit Card Authentication [Reserved for Product Description]
Confirm [Reserved for Product Description]
International Reply Coupon Service [Reserved for Product Description]
International Business Reply Mail Service [Reserved for Product Description]
Money Orders [Reserved for Product Description]
Post Office Box Service [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
Bookspan Negotiated Service Agreement [Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
2000 Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail [Reserved for Group Description]
Express Mail [Reserved for Product Description]
Outbound International Expedited Services [Reserved for Product Description]
Inbound International Expedited Services [Reserved for Product Description]
Priority [Reserved for Product Description]
Priority Mail [Reserved for Product Description]
Outbound Priority Mail International [Reserved for Product Description]
Inbound Air Parcel Post [Reserved for Product Description]
Parcel Select [Reserved for Group Description]
Parcel Return Service [Reserved for Group Description]
International [Reserved for Group Description]
International Priority Airlift (IPA) [Reserved for Product Description]

International Surface Airlift (ISAL) [Reserved for Product Description]
International Direct Sacks—M-Bags [Reserved for Product Description]
Global Customized Shipping Services [Reserved for Product Description]
International Money Transfer Service [Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
International Insurance [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Group Description]
Domestic [Reserved for Product Description]
Outbound International [Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8–30420 Filed 12–19–08; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–11 and CP2009–13; Order No. 148]

New Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 74212 (December 5, 2008).

I. Background

The Postal Service seeks to add a new product identified as Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On November 25, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List.[1] The Postal Service asserts that the Parcel Select & Parcel Return Service Contract 1 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–11.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–13.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Parcel Select & Parcel Return Service Contract 1 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire on May 31, 2011, and will become effective 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the Mail Classification Schedule product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Daniel J. Barrett, Acting Manager, Product & Business Development, Ground Shipping Services, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 142, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative and Newgistics, Inc.[8] The Public Representative Comments focus principally on the adequacy of cost coverage, appropriate classification of the product, and overall transparency. Public Representative Comments at 1–2. He concludes that the agreement meets the important public interest in adequate cost coverage and believes the agreement is properly classified as a competitive product. *Id.*

The Public Representative also raises an issue with respect to transparency and the method that the Postal Service uses in this case to redact its filings. He notes that the Commission's rules contemplate text-based pdf files where possible. *Id.* at 5; accord 39 CFR 3001.10. Despite these minor caveats, the Public Representative believes that the Postal Service should be commended for continuing to proceed diligently toward accommodating transparency concerns in a very competitive business environment.

Newgistics' comments focus on the financial gain to the Postal Service. It believes that the contract must demonstrate that it will provide ''new volumes and revenues'' to the Postal Service. It wants to ensure that the Postal Service does not take volume from other postal mail service providers. It notes that shifting mail from one Postal Service customer to another does not result in a contribution gain for the Postal Service. Newgistics also contends

[1] Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the agreement remains profitable regardless of the discount level and results in a positive contribution impact of the Postal Service under all conditions.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 142, Notice and Order Concerning Parcel Select Parcel Return Service Contract 1 Negotiated Service Agreement, December 2, 2008 (Order No. 142).

[8] Public Representative Comments in Response to Order No. 142, December 10, 2008 (Public Representative Comments); Response from Bill Razzouk, Newgistics to Postal Regulatory Commission Notice and Order Concerning Parcel Select & Parcel Return Service Contract 1 Negotiated Service Agreement Order No. 142, December 10, 2008 (Newgistics Comments).

that contract rates should not provide an unfair advantage to one company over another.

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative and Newgistics.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Parcel Select & Parcel Return Service Contract 1 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Parcel Select & Parcel Return Service Contract 1 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that the market for ground services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Parcel Select & Parcel Return Service Contract 1 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Parcel Select & Parcel Return Service Contract 1 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Commission's library reference PRC–CP2009–13–NP–LR–1 analyzes the financial impact of this of this contract. Library Reference PRC–CP2009–13–NP–LR–1 updates the original data submitted by the Postal Service and provides calculations for revenue per piece for each of the negotiated service agreement's rate categories. The results show that the updated data do not cause the financial results to vary significantly.

Based on the data submitted and the Commission's analysis shown in Library Reference PRC–CP2009–13–NP–LR–1, the Commission finds that Parcel Select & Parcel Return Service Contract 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Parcel Select & Parcel Return Service Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

Public Representative comments. As evidenced by filings in other recent negotiated service agreement dockets, it appears that the Postal Service typically has the ability to properly redact files using blackouts while maintaining the documents' ''searchability'' characteristics. The Postal Service should strive to ensure that all redacted documents are properly redacted using blackouts unless it specifically justifies the use of other redaction methods in its filings.

Newgistics comments. For the Commission to approve new competitive products and their accompanying rates not of general applicability, the law requires that the contracts meet the requirements of 39 U.S.C. 3633, 3642 and accompanying regulatory criteria. The Postal Service should strive to obtain new volumes and revenues, but the law does not require new volumes and revenues for the Postal Service to enter into negotiated service agreements for competitive products. Additionally, section 403(c) bars undue discrimination and unreasonable preferences. However, no evidence of undue discrimination or unreasonable preferences has been shown here. If Newgistics believes that such a violation exists, it may file a complaint with the Commission pursuant to 39 U.S.C. 3662 to explore the issue.

In conclusion, the Commission approves Parcel Select & Parcel Return Service Contract 1 as a new competitive product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
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  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
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  Bookspan Negotiated Service Agreement
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  The Bradford Group Negotiated Service Agreement
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  Single-Piece Letters/Postcards [Reserved for Product Description]
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  Flats [Reserved for Product Description]
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  Outbound Single-Piece First-Class Mail International [Reserved for Product Description]
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  Within County Periodicals [Reserved for Product Description]
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  Single-Piece Parcel Post [Reserved for Product Description]
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  Bound Printed Matter Flats [Reserved for Product Description]
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  Parcel Airlift (PAL) [Reserved for Product Description]
  Registered Mail [Reserved for Product Description]
  Return Receipt [Reserved for Product Description]
  Return Receipt for Merchandise [Reserved for Product Description]
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  Premium Stamped Stationery [Reserved for Product Description]
  Premium Stamped Cards [Reserved for Product Description]
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  International Return Receipt [Reserved for Product Description]
  International Restricted Delivery [Reserved for Product Description]
  Address List Services [Reserved for Product Description]
  Caller Service [Reserved for Product Description]
  Change-of-Address Credit Card Authentication [Reserved for Product Description]
  Confirm [Reserved for Product Description]
  International Reply Coupon Service [Reserved for Product Description]
  International Business Reply Mail Service [Reserved for Product Description]
  Money Orders [Reserved for Product Description]
  Post Office Box Service [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Class Description]
  HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
  Bookspan Negotiated Service Agreement [Reserved for Product Description]
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
2000 Competitive Product List
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  Outbound International Expedited Services
  Inbound International Expedited Services
  Inbound International Expedited Services 1 (CP2008–7)
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  Priority Mail
  Outbound Priority Mail International
  Inbound Air Parcel Post
Parcel Select
Parcel Return Service
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  International Priority Airlift (IPA)
  International Surface Airlift (ISAL)
  International Direct Sacks—M-Bags
  Global Customized Shipping Services
  Inbound Surface Parcel Post (at non-UPU rates)
  Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
  International Money Transfer Service
  International Ancillary Services
Special Services
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Negotiated Service Agreements
  Domestic
  Express Mail Contract 1 (MC2008–5)
  Express Mail Contract 2 (MC2009–3 and CP2009–4)
  Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
  Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
  Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
  Priority Mail Contract 1 (MC2008–8 and CP2008–26)
  Priority Mail Contract 2 (MC2009–2 and CP2009–3)
  Priority Mail Contract 3 (MC2009–4 and CP2009–5)
  Priority Mail Contract 4 (MC2009–5 and CP2009–6)
  Outbound International

Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
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Express Mail [Reserved for Group Description]
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Outbound International Expedited Services [Reserved for Product Description]
Inbound International Expedited Services [Reserved for Product Description]
Priority [Reserved for Product Description]
Priority Mail [Reserved for Product Description]
Outbound Priority Mail International [Reserved for Product Description]
Inbound Air Parcel Post [Reserved for Product Description]
Parcel Select [Reserved for Group Description]
Parcel Return Service [Reserved for Group Description]
International [Reserved for Group Description]
International Priority Airlift (IPA) [Reserved for Product Description]
International Surface Airlift (ISAL) [Reserved for Product Description]
International Direct Sacks—M-Bags [Reserved for Product Description]
Global Customized Shipping Services [Reserved for Product Description]
International Money Transfer Service [Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
International Insurance [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Group Description]
Domestic [Reserved for Product Description]
Outbound International [Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0472; FRL–8755–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Stafford County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by theCommonwealth of Virginia. This SIP revision fulfills Virginia's reasonably available control technology (RACT) requirements under the Clean Air Act (CAA or the Act) with respect to the 8-hour ozone national ambient air quality standard (NAAQS) in Stafford County. Virginia has fulfilled these requirements by submitting a certification that 1-hour ozone NAAQS RACT controls for sources in the Commonwealth subject to control technology guidelines (CTGs) and for a single major source not subject to any CTG, continue to represent RACT under the 8-hour NAAQS, and submitting a negative declaration demonstrating that no facilities exist in Stafford County that are subject to certain enumerated CTGs that have not been adopted by Virginia.

DATES: *Effective Date:* This final rule is effective on January 21, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0472. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet andwill be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2008 (73 FR 45925), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Stafford County's requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. The formal SIP revision was submitted by the Virginia Department of Environmental Quality on April 21, 2008.

II. Summary

Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the nitrogen oxides (NO_X) and volatile organic compounds (VOCs) RACT requirements that apply in areas that have not attained the NAAQS for ozone. *See* 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2), and 42 U.S.C. 7511a(f). EPA has determined that States that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. *See Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline* (Phase 2 Rule) 70 FR 71612, 71655, November 29, 2005. Alternatively, a State may adopt new or more stringent regulations that represent RACT control levels, either in lieu of or in conjunction with a certification.

The Commonwealth of Virginia has submitted a certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS continue to represent RACT for the 8-hour implementation purposes. This previously adopted RACT consists of Virginia's adoption of EPA promulgated CTGs for those source categories that apply to existing sources in Stafford County. Virginia has also submitted a negative declaration demonstrating that no facilities exist in Stafford County for

those CTGs that have not been adopted by Virginia.

Virginia has also certified, based on consideration of additional research, that the 1-hour ozone NAAQS RACT determination for the only major stationary source located in Stafford County not covered by a CTG continues to represent RACT under the 8-hour ozone NAAQS. Other specific requirements of RACT and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

On September 8, 2008, EPA received adverse comments from State of New Jersey Department of Environmental Protection on the NPR. A summary of the comments submitted and EPA's response is provided in Section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: The commenter opposes the approval of the SIP revision submitted by Virginia for Stafford County. The commenter notes that Stafford County is a moderate ozone nonattainment area, and is required to implement RACT on all major VOC and NO_X sources, and all sources covered by a CTG. The commenter also states that in the final rule to implement the 8-hour ozone standard (i.e., the Phase 2 Rule) EPA indicates that States may rely on existing CTGs and the prior 1-hour RACT determinations as presumptive RACT. The comment also states that most CTGs and prior 1-hour RACT determinations were done over a decade ago, and asserts that the emission limits are no longer RACT because of advancements in air pollution control technology. This is especially the case, it argues, for nitrogen oxides. Additionally, the commenter appears to believe that section 108 of the Act requires EPA to review, modify and reissue control technology in a timely fashion, that EPA has failed to do so, and that this failure to do so prevents EPA from allowing States the discretion of certifying that previous 1-hour ozone RACT determinations fulfill obligations under the 8-hour ozone NAAQS. The commenter also asserts that it is adversely affected because it is a downwind state. Finally, the commenter notes that and sections 110(a)(2)(D) and Part D of the CAA require upwind states to include adequate controls in their SIPs prohibiting interstate transport of air pollutants in amounts that contribute to nonattainment in any downwind state.

Response: The commenter correctly notes that Stafford County is a moderate ozone nonattainment area and is required to implement RACT on all major VOC and NO_X sources, and all sources covered by a CTG. The RACT provisions of the CAA are set forth in sections 172(c)(1) and 182(b)(2) of Part D of the Act. 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2). Section 172 applies to RACT in so-called ''subpart 1'' areas. Stafford County is not a ''subpart 1'' area. RACT, as it applies in moderate or above ozone nonattainment areas, or within the OTR, *i.e.*, to Stafford County, is a specific requirement set forth in Section 182(b)(2) of Part D of the Act. Section 182(b)(2) identifies the categories of sources to which RACT applies. Section 182(b)(2) does not specify the level of control required to meet the RACT requirement.

The commenter also correctly acknowledges that the Phase 2 Rule, 70 FR 71612, explicitly addressed whether, and the circumstances under which, states may continue to rely on existing CTGs and the prior 1-hour RACT determinations. Specifically, in the Phase 2 Rule, EPA determined that States may certify that ''previously required RACT controls represent RACT for 8-hour implementation purposes.'' 70 FR at 71652.

The commenter does not allege that EPA's approval of the SIP revision is inconsistent with the provisions of the Phase 2 Rule. The final action establishing those provisions was taken by EPA, not in today's action, but in the **Federal Register** notice for the Phase 2 Rule published on November 29, 2005, 70 FR 71612. Challenges to the Phase 2 Rule have been brought by commenter and others in the U.S. Court of Appeals for the District of Columbia. *Natural Resources Defense Council* v. *EPA* (D.C. Cir. No. 06–1045 and consolidated cases).

The Phase 2 Rule, in fact, explicitly addresses the State's obligation to consider new information when deciding whether to certify that prior RACT determinations remain valid for the 8-hour ozone NAAQS. The commenter does not allege that the State has failed to satisfy that obligation, or that it has not met any other requirements in the Phase 2 Rule for certifying that its prior RACT determinations remain valid for the 8-hour ozone NAAQS. Thus, while we agree with commenter that many of the CTGs have not been revised since they were issued, we do not agree that it is therefore improper for EPA to approve this SIP revision. In the Phase 2 Rule, EPA specifically addressed concerns arising from our recognition that ''the CTGs/ACTs * * * may not provide the most accurate picture of current control options.'' 70 FR at 71655.

In response, we decided that ''States and other interested parties should consider available information that may supplement the CTG and ACT documents. In cases where additional information is presented, for example, as part of notice-and-comment rulemaking on a RACT SIP submittal, States (and EPA) would necessarily consider the additional data in reviewing what control obligation is consistent with RACT.'' 70 FR at 71655. Only after conducting this review may a State certify that a 1-hour ozone RACT determination continues to represent an appropriate RACT level of control for the 8-hour ozone program. *Id.* Absent data indicating that the previous RACT determination is no longer appropriate, the State may certify that the existing 1-hour RACT determination fulfills the requirement for 8-hour ozone RACT, and the State need not submit in its SIP a new RACT requirement for those sources. *Id.*

Although the commenter broadly alleges that the CTGs no longer reflect RACT because they have not been updated recently, the commenter does not identify any specific deficiencies or indicate which, if any, of the particular CTGs adopted by Virginia it believes to be defective. Furthermore, no evidence in the record indicates that Virginia either determined—or that anyone brought to its attention during the notice and comment rulemaking for this SIP submission—that evidence existed to cast doubt on the appropriateness under the 8-hour ozone NAAQS of any of the previously adopted and SIP-approved CTGs. A commenter bears some burden of bringing to an agency's attention at least some particulars of an alleged defect in a rulemaking. *See, International Fabricare Inst.* v. *EPA, 972 F.2d 384, 391* (D.C. Cir. 1992).

In sum, the commenter has not identified any new information that has become available, but that the State did not consider and has not even alleged that any particular CTG actually adopted into the Virginia SIP fails to represent RACT under the 8-hour ozone NAAQS. Thus, under the specific terms of the Phase 2 ozone implementation rule, Virginia is entitled to rely on that Rule's presumption that absent evidence to the contrary, a state may certify that CTGs previously adopted to meet 1-hour ozone NAAQS continue to meet the requirements for RACT under the 8-hour ozone NAAQS. *See* 70 FR at 71652, 71654–55.

With respect to the single major source in Stafford County that is not subject to a CTG, Virginia took reasonable steps to seek out additional information to assure that the 1-hour

ozone NAAQS source-specific RACT determination for this source continues to represent RACT under the 8-hour ozone NAAQs. This is consistent with our determination in the Phase 2 Rule that the certification must be submitted with appropriate supporting information, including the consideration of new data. In all cases where additional information is presented, States (and EPA) must consider the additional information as part of that rulemaking, and absent such information, the State may certify existing RACT as meeting the 8-hour ozone requirements. 70 FR at 71655.

Virginia reviewed EPA's RACT/BACT/LAER clearinghouse for sources within the same Standard Industrial Classification code as the sole major non-CTG source in Stafford County, and determined that there was no information to indicate that the 8-hour ozone RACT determination should be different from the August 10, 1998 1-hour ozone RACT determination for this facility, which has been approved by EPA. *See* 66 FR 8, January 2, 2001. Based on the forgoing, the low potential emissions from the facility, and the even lower actual emissions from the facility, Virginia determined in its SIP submission, consistent with the Phase 2 Rule, that the existing 1-hour RACT determination could be certified as fulfilling the 8-hour ozone RACT requirements. As with our analysis with respect to the CTG RACT certification, we believe that Virginia is entitled to rely on the Phase 2 Rule's presumption that absent evidence to the contrary, a state may certify this 1-hour ozone NAAQS determination as meeting the requirements for RACT under the 8-hour ozone NAAQS.

We also do not agree with commenter's apparent beliefs regarding section 108 of the Clean Air Act. With respect to that section, the commenter states that ''[a]ccording to Section 108(c) of the Clean Air Act, EPA has an obligation to review, modify and reissue control techniques'' and that ''USEPA has failed to do so in a timely fashion.'' Section 108 of the Act provides that ''the Administrator shall from time to time review, and as appropriate, modify or reissue any criteria or information on control techniques. * * *'' Section 108 does not establish time frames for the Administrator to review, modify, or reissue control techniques. Furthermore, section 108 provides that the review, modification or reissuance of a RACT is only to be done ''as appropriate.'' EPA believes that Congress left the decision whether to review, modify or reissue a control technique to the Administrator's discretion.

Finally, with respect to the comments related to requirements of section 110(a)(2)(D) and Part D of the Act, EPA agrees with the commenter that section 110(a)(2)(D) requires, among other things, that a State's SIP needs to contain provisions to regulate the interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of a NAAQS in another State. 42 U.S.C. 7411(a)(2)(D). Although Title I, Part D of the Act does not contain similar language, section 184 is within Title I, Part D of the Act. Section 184 contains specific provisions to address interstate transport of ozone and its precursors within the Ozone Transport Region (OTR) (which includes both New Jersey and Stafford County). This comment, however, is not relevant to the present action because EPA is not taking action here to determine whether Virginia has satisfied the requirements of CAA sections 110(a)(2)(D) or 184. EPA has never interpreted the RACT provisions in section 172(c)(1) or 182(b)(2) as requiring States to address interstate transport issues. Indeed, EPA has expressly stated in the Phase 2 Rule that we ''believe [] that section 172(c) is not the appropriate section of the CAA to address the transport of ozone and ozone precursors * * *'' 70 FR at 71653. We believe, based on the forgoing, that the section 182(b)(2) RACT requirements also are not intended as a mechanism for addressing interstate transport of pollutants.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding (10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at

any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the SIP revision submitted to EPA by the Commonwealth of Virginia on April 21, 2008. This SIP revision contains the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the Stafford County RACT under the 8-hour ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding the entry for RACT under the 8-hour ozone NAAQS-Stafford County at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
RACT under the 8-Hour NAAQS.	Stafford County	4/21/2008	[Insert *Federal Register* page number where the document begins and date].	

[FR Doc. E8–30212 Filed 12–19–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R04–OAR–2008–0605; FRL–8745–8]

Outer Continental Shelf Air Regulations Consistency Update for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule-consistency update.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on September 4, 2008. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (''CAA'' or ''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Florida has been designated COA. The effect of approving the OCS requirements for the State of Florida is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below will be incorporated by reference into the Code of Federal Regulations (CFR) and is listed in the appendix to the OCS air regulations. This action is an annual update of the Florida's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources. No comments were received on the September 4, 2008, proposal.

DATES: *Effective Date:* This rule is effective on January 21, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the **Federal Register** as of January 21, 2009.

ADDRESSES: EPA has established docket number EPA–R04–OAR–2008–0605 for this action. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Permit 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. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. EPA Action
III. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55, which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This process is distinct from the State Implementation Plan (SIP) process and incorporation of a rule into part 55 as part of the OCS consistency update process does not ensure such a rule would be appropriate for inclusion into the SIP. EPA proposed approval of Florida's rules for OCS consistency update on September 4, 2008 (73 FR 51610), and received no comments.

II. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

(1) Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 (58 FR 51735, October 4, 1993);

(2) Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

(3) Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

(4) Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

(5) Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

(6) Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

(7) Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

(8) Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 and are identified on the form and/or instrument, if applicable. In addition, the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations lists the regulatory citations for the information requirements contained in 40 CFR part 55.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

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

Dated: November 14, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

■ 40 CFR part 55 is amended as follows:

PART 55—[AMENDED]

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

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

■ 2. Section 55.14 is amended as follows:

■ a. In paragraph (e) introductory text by removing the words ''345 Courtland Street, NE., Atlanta, GA 30365;'' and adding in their place the words ''61 Forsyth Street, Atlanta, GA 30303''.

■ b. By revising paragraph (e)(6)(i)(A).

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

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) State of Florida Requirements Applicable to OCS Sources, January 2, 2008.

* * * * *

■ 3. Appendix A to part 55 is amended under the heading ''Florida'' by adding a new paragraph (a) immediately following the heading and revising paragraph (1) to read as follows:

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

* * * * *

Florida

(a) State requirements.

(1) The following requirements are contained in *State of Florida Requirements Applicable to OCS Sources,* January 2, 2008: Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 62:

CHAPTER 62–4 PERMITS

62–4.001 Scope of Part I (Effective 10/1/07)
62–4.020 Definitions (Effective 4/3/03)
62–4.021 Transferability of Definitions (Effective 8/31/88)
62–4.030 General Prohibition (Effective 8/31/88)
62–4.040 Exemptions (Effective 8/31/88)
62–4.050 Procedure to Obtain Permits and other Authorizations; Applications (Effective 10/31/07)
62–4.055 Permit Processing (Effective 8/16/98)
62–4.060 Consultation (Effective 8/31/88)
62–4.070 Standards of Issuing or Denying Permits; Issuance; Denial (Effective 3/28/91)

62–4.080 Modification of Permit Conditions (Effective 3/19/90)
62–4.090 Renewals (Effective 3/16/08)
62–4.100 Suspension and Revocation (Effective 8/31/88)
62–4.110 Financial Responsibility (Effective 8/31/88)
62–4.120 Transfer of Permits (Effective 4/16/01)
62–4.130 Plant Operation—Problems (Effective 8/31/88)
62–4.150 Review (Effective 8/31/88)
62–4.160 Permit Conditions (Effective 7/11/93)
62–4.200 Scope of Part II (Effective 10/1/07)
62–4.210 Construction Permits (Effective 8/31/88)
62–4.220 Operation Permit for New Sources (Effective 8/31/88)
62–4.249 Preservation of Rights (Effective 8/31/88)
62–4.510 Scope of Part III (Effective 10/1/07)
62–4.520 Definition (Effective 7/11/90)
62–4.530 Procedures (Effective 3/19/90)
62–4.540 General Conditions for All General Permits (Effective 8/31/88)

CHAPTER 62–204 AIR POLLUTION CONTROL—GENERAL PROVISIONS

62–204.100 Purpose and Scope (Effective 3/13/96)
62–204.200 Definitions (Effective 2/12/06)
62–204.220 Ambient Air Quality Protection (Effective 3/13/96)
62–204.240 Ambient Air Quality Standards (Effective 3/13/96)
62–204.260 Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments) (Effective 2/12/06)
62–204.320 Procedures for Designation and Redesignation of Areas (Effective 3/13/96)
62–204.340 Designation of Attainment, Nonattainment, and Maintenance Areas (Effective 3/13/96)
62–204.360 Designation of Prevention of Significant Deterioration Areas (Effective 3/13/96)
62–204.400 Public Notice and Hearing Requirements for State Implementation Plan Revisions (Effective 11/30/94)
62–204.500 Conformity (Effective 9/1/98)
62–204.800 Federal Regulations Effective by Reference (Effective 7/1/08)

CHAPTER 62–210 STATIONARY SOURCES—GENERAL REQUIREMENTS

62–210.100 Purpose and Scope (Effective 1/10/07)
62–210.200 Definitions (Effective 3/16/08)
62–210.220 Small Business Assistance Program (Effective 2/11/99)
62–210.300 Permits Required (Effective 3/16/08)
62–210.310 Air General Permits (Effective 5/9/07)
62–210.350 Public Notice and Comment (Effective 2/2/06)
62–210.360 Administrative Permit Corrections (Effective 3/16/08)
62–210.370 Emissions Computation and Reporting (Effective 7/3/08)
62–210.550 Stack Height Policy (Effective 11/23/94)
62–210.650 Circumvention (Effective 8/26/1981)
62–210.700 Excess Emissions (Effective 11/23/94)
62–210.900 Forms and Instructions (Effective 7/3/08)
62–210.920 Registration Forms for Air General Permits (Effective 5/9/07)

CHAPTER 62–212 STATIONARY SOURCES—PRECONSTRUCTION REVIEW

62–212.100 Purpose and Scope (Effective 5/20/97)
62–212.300 General Preconstruction Review Requirements (Effective 2/2/06)
62–212.400 Prevention of Significant Deterioration (PSD) (Effective 7/16/07)
62–212.500 Preconstruction Review for Nonattainment Areas (Effective 2/2/06)
62–212.600 Sulfur Storage and Handling Facilities (Effective 8/17/00)
62–212.710 Air Emissions Bubble (Effective 5/20/97)
62–212.720 Actuals Plantwide Applicability Limits (PALs) (Effective 7/16/07)

CHAPTER 62–213 OPERATION PERMITS FOR MAJOR SOURCES OF AIR POLLUTION

62–213.100 Purpose and Scope (Effective 3/13/96)
62–213.202 Responsible Official (Effective 6/02/02)
62–213.205 Annual Emissions Fee (Effective 3/16/08)
62–213.300 Title V Air General Permits (Effective 4/14/03)
62–213.400 Permits and Permit Revisions Required (Effective 3/16/08)
62–213.405 Concurrent Processing of Permit Applications (Effective 6/02/02)
62–213.410 Changes Without Permit Revision (Effective 6/02/02)
62–213.412 Immediate Implementation Pending Revision Process (Effective 6/02/02)
62–213.413 Fast-Track Revisions of Acid Rain Parts (Effective 6/02/02)
62–213.415 Trading of Emissions Within a Source (Effective 4/16/01)
62–213.420 Permit Applications (Effective 3/16/08)
62–213.430 Permit Issuance, Renewal, and Revision (Effective 3/16/08)
62–213.440 Permit Content (Effective 3/16/08)
62–213.450 Permit Review by EPA and Affected States (Effective 1/03/01)
62–213.460 Permit Shield (Effective 3/16/08)
62–213.900 Forms and Instructions (Effective 4/14/03)

CHAPTER 62–214 REQUIREMENTS FOR SOURCES SUBJECT TO THE FEDERAL ACID RAIN PROGRAM

62–214.100 Purpose and Scope (Effective 3/16/08)
62–214.300 Applicability (Effective 3/16/08)
62–214.320 Applications (Effective 3/16/08)
62–214.330 Acid Rain Compliance Plan and Compliance Options (Effective 3/16/08)
62–214.340 Exemptions (Effective 3/16/08)
62–214.350 Certification (Effective 12/10/97)
62–214.360 Department Action on Applications (Effective 3/16/08)
62–214.370 Revisions and Administrative Corrections (Effective 4/16/01)
62–214.420 Acid Rain Part Content (Effective 3/16/08)
62–214.430 Implementation and Termination of Compliance Options (Effective 3/16/08)

CHAPTER 62–252 GASOLINE VAPOR CONTROL

62–252.100 Purpose and Scope (Effective 2/2/93)
62–252.200 Definitions (Effective 5/9/07)
62–252.300 Gasoline Dispensing Facilities—Stage I Vapor Recovery (Effective 5/9/07)
62–252.400 Gasoline Dispensing Facilities—Stage II Vapor Recovery (Effective 5/9/07)
62–252.500 Gasoline Tanker Trucks or Trailers (Effective 5/9/07)
62–252.900 Form. (Effective 5/9/07)

CHAPTER 62–256 OPEN BURNING AND FROST PROTECTION FIRES

62–256.200 Definitions (Effective 7/6/05)
62–256.300 Prohibitions (Effective 7/6/05)
62–256.700 Open Burning Allowed (Effective 7/6/05)

CHAPTER 62–296 STATIONARY SOURCES–EMISSION STANDARDS

62–296.100 Purpose and Scope (Effective 3/13/96)
62–296.320 General Pollutant Emission Limiting Standards (Effective 3/13/96)
62–296.340 Best Available Retrofit Technology (Effective 1/31/07)
62–296.341 Regional Haze—Reasonable Progress Control Technology (Effective 2/7/08)
62–296.401 Incinerators (Effective 1/10/07)
62–296.402 Sulfuric Acid Plants (Effective 3/13/96)
62–296.403 Phosphate Processing (Effective 3/13/96)
62–296.404 Kraft (Sulfate) Pulp Mills and Tall Oil Plants (Effective 3/13/96)
62–296.405 Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input (Effective 3/2/99)
62–296.406 Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units (Effective 3/2/99)
62–296.407 Portland Cement Plants (Effective 1/1/96)
62–296.408 Nitric Acid Plants (Effective 1/1/96)
62–296.409 Sulfur Recovery Plants (Effective 1/1/96)
62–296.410 Carbonaceous Fuel Burning Equipment (Effective 1/1/96)
62–296.411 Sulfur Storage and Handling Facilities (Effective 1/1/96)
62–296.412 Dry Cleaning Facilities (Effective 10/7/96)
62–296.413 Synthetic Organic Fiber Production (Effective 2/12/06)
62–296.414 Concrete Batching Plants (Effective 1/10/07)
62–296.415 Soil Thermal Treatment Facilities (Effective 3/13/96)
62–296.416 Waste-to-Energy Facilities (Effective 10/20/96)

62–296.417 Volume Reduction, Mercury Recovery and Mercury Reclamation (Effective 3/2/99)
62–296.418 Bulk Gasoline Plants (Effective 5/9/07)
62–296.470 Implementation of Federal Clean Air Interstate Rule (Effective 4/1/07)
62–296.480 Implementation of Federal Clean Air Mercury Rule (Effective 9/6/06)
62–296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities (Effective 1/1/96)
62–296.501 Can Coating (Effective 1/1/96)
62–296.502 Coil Coating (Effective 1/1/96)
62–296.503 Paper Coating (Effective 1/1/96)
62–296.504 Fabric and Vinyl Coating (Effective 1/1/96)
62–296.505 Metal Furniture Coating (Effective 1/1/96)
62–296.506 Surface Coating of Large Appliances (Effective 1/1/96)
62–296.507 Magnet Wire Coating (Effective 1/1/96)
62–296.508 Petroleum Liquid Storage (Effective 1/1/96)
62–296.510 Bulk Gasoline Terminals (Effective 1/1/96)
62–296.511 Solvent Metal Cleaning (Effective 10/7/96)
62–296.512 Cutback Asphalt (Effective 1/1/96)
62–296.513 Surface Coating of Miscellaneous Metal Parts and Products (Effective 1/1/96)
62–296.514 Surface Coating of Flat Wood Paneling (Effective 1/1/96)
62–296.515 Graphic Arts Systems (Effective 1/1/96)
62–296.516 Petroleum Liquid Storage Tanks with External Floating Roofs (Effective 1/1/96)
62–296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_X-Emitting Facilities (Effective 3/2/99)
62–296.600 Reasonably Available Control Technology (RACT) Lead (Effective 3/13/96)
62–296.601 Lead Processing Operations in General (Effective 1/1/96)
62–296.602 Primary Lead-Acid Battery Manufacturing Operations (Effective 3/13/96)
62–296.603 Secondary Lead Smelting Operations (Effective 1/1/96)
62–296.604 Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations. (Effective 1/1/96)
62–296.605 Lead Oxide Handling Operations (Effective 8/8/1994)
62–296.700 Reasonably Available Control Technology (RACT) Particulate Matter (Effective 1/1/96)
62–296.701 Portland Cement Plants (Effective 1/1/96)
62–296.702 Fossil Fuel Steam Generators (Effective 1/1/96)
62–296.703 Carbonaceous Fuel Burners (Effective 1/1/96)
62–296.704 Asphalt Concrete Plants (Effective 1/1/96)
62–296.705 Phosphate Processing Operations (Effective 1/1/96)
62–296.706 Glass Manufacturing Process (Effective 1/1/96)
62–296.707 Electric Arc Furnaces (Effective 1/1/96)
62–296.708 Sweat or Pot Furnaces (Effective 1/1/96)
62–296.709 Lime Kilns (Effective 1/1/96)
62–296.710 Smelt Dissolving Tanks (Effective 1/1/96)
62–296.711 Materials Handling, Sizing, Screening, Crushing and Grinding Operations (Effective 1/1/96)
62–296.712 Miscellaneous Manufacturing Process Operations (Effective 1/1/96)

CHAPTER 62–297 STATIONARY SOURCE EMISSIONS MONITORING

62–297.100 Purpose and Scope (Effective 3/13/96)
62–297.310 General Compliance Test Requirements (Effective 3/2/99)
62–297.320 Standards for Persons Engaged in Visible Emissions Observations (Effective 2/12/04)
62–297.401 Compliance Test Methods (Effective 3/2/99)
62–297.440 Supplementary Test Procedures (Effective 10/22/02)
62–297.450 EPA VOC Capture Efficiency Test Procedures (Effective 3/2/99)
62–297.520 EPA Continuous Monitor Performance Specifications (Effective 3/2/99)
62–297.620 Exceptions and Approval of Alternate Procedures and Requirements (Effective 11/23/94)

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, and 65

[EPA–HQ–OAR–2003–0199; FRL–8754–5]

RIN 2060–AL98

Alternative Work Practice To Detect Leaks From Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Numerous EPA air emissions standards require specific work practices for equipment leak detection and repair. On April 6, 2006, we proposed a voluntary alternative work practice for leak detection and repair using a newly developed technology, optical gas imaging. The alternative work practice is an alternative to the current leak detection and repair work practice, which is not being revised. The proposed alternative has been amended in this final rule to add a requirement to perform monitoring once per year using the current Method 21 leak detection instrument. This action revises the General Provisions to incorporate the final alternative work practice.

DATES: This final action is effective on December 22, 2008.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0199. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is located in the EPA Headquarters Library, Room Number 3334, and 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: Mr. David Markwordt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–0837, facsimile (919) 541–0246, e-mail *markwordt.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by this final rule amendment include, but are not limited to the following North American Industry Classification System (NAICS) code categories:

Category	NAICS Code	Examples of potentially regulated entities
Industry	325 324	Chemical manufacturers. Petroleum refineries and manufacturers of coal products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility is affected by the national emission standards, you should examine the applicability criteria in 40 CFR parts 60, 61, 63, and 65, including, but not limited to: Part 60, subparts A, Kb, VV, XX, DDD, GGG, KKK, QQQ, and WWW; part 61, subparts A, F, L, V, BB, and FF; part 63, subparts A, G, H, I, R, S, U, Y, CC, DD, EE, GG, HH, OO, PP, QQ, SS, TT, UU, VV, YY, GGG, HHH, III, JJJ, MMM, OOO, VVV, FFFF, and GGGGG; and part 65, subparts A, F, and G.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule amendment is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this final rule amendment 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.

Outline. The information in this preamble is organized as follows:

I. Background Information
- A. What is the statutory basis for this action?
- B. What did we propose?

II. Summary of Changes to the Proposed Rule
- A. Removal of the Minimum Detection Sensitivity Level Defaults
- B. Annual EPA Method 21 Monitoring while Complying with the AWP
- C. Re-screening Repaired Equipment
- D. Recordkeeping for AWP Compliance

III. Response to Significant Comments
- A. Basis of Standard
- B. Applicability
- C. Rule Location
- D. Alternative Work Practice Procedures and Equipment Specifications
- E. Recordkeeping and Reporting
- F. Other Comments

IV. 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 Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- K. Congressional Review Act

I. Background Information

A. What Is the Statutory Basis for This Action?

Current leak detection and repair (LDAR) requirements are primarily applicable to sources through EPA work practice standards promulgated under Clean Air Act (CAA) section 111 (New Source Performance Standards (NSPS)) and section 112 (National Emission Standards for Hazardous Air Pollutants (NESHAP)). These sections authorize EPA to promulgate work practice standards in lieu of numerical emission standards when ''it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard'' because the regulated pollutants ''cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant * * * or [because] the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.'' 42 U.S.C. 7412(h)(1), (2); see also 42 U.S.C. 7411(h)(1), (2).

In promulgating such standards, we are not required to mandate a single work practice applicable to all sources in a source category but may instead provide several alternative work practice (AWP) options. Indeed, the United States Court of Appeals for the District of Columbia Circuit has indicated that EPA may provide sources with multiple work practice compliance options if EPA demonstrates that at least one of these options is cost effective and ''expressly provides for the alternative in the standard.'' Arteva Specialties S.R.R.L., d/b/a *KoSa* v. *EPA,* 323 F.3d 1088, 1092 (DC Cir. 2003).

Once promulgated, EPA retains the authority to provide additional work practice alternatives. Such authority exists under EPA's general authority to review and amend its regulations as appropriate, *e.g.,* 42 U.S.C. 7411(b)(1)(B), 42 U.S.C. 7412(d)(6).

B. What Did We Propose?

The proposed AWP allows owners or operators to identify leaking equipment using an optical gas imaging instrument instead of a leak monitor prescribed in 40 CFR part 60, Appendix A–7 *i.e.,* a Method 21 instrument. The new work practice requirements are identical to the existing work practice requirements except for those requirements which are directly or indirectly associated with the instrument used to detect the leaks; for example, owners or operators are still subject to the existing ''difficult to monitor,'' ''unsafe to monitor,'' repair, recordkeeping, and reporting requirements. If a leak is identified using the optical gas imaging instrument, then the leak must be re-screened after repair using the imaging instrument.

Owners or operators are required to use an optical gas imaging instrument capable of imaging compounds in the streams that are regulated by the applicable rule. The imaging instrument must provide the operator with an image of the leak and the leak source.

Prior to using the optical gas imaging instrument, owners and operators are required to determine the mass flow rate that the imaging instrument will be required to image. The optical gas imaging instrument is required to either meet a minimum detection sensitivity mass flow rate (provided in the proposed AWP) or owners or operators can calculate the mass flow rate for their process by prorating a standard detection sensitivity emission rate (provided in the proposed AWP) using equations provided in the amendatory language. If the owner or operator chooses to prorate the standard detection sensitivity, they are required to conduct an engineering analysis to identify the stream containing the lowest mass fraction of chemicals that have to be identified as detectable.

Owners or operators are required to conduct a daily instrument check to confirm that the optical gas imaging instrument is able to detect leaks at the emission rate specified in the amendatory language (or calculated by the owner or operator). The instrument check consists of using the optical gas imaging instrument to view the mass flow rate required to be met exiting a gas cylinder.

Owners or operators using the AWP are required to keep records of the detection sensitivity level used for the optical gas imaging instrument; the analysis to determine the stream containing the lowest mass fraction of detectable chemicals; the basis of the mass fraction emission rate calculation; documentation of the daily instrument check (either with the video recording device, electronically, or written in a log book); and the video record of the leak survey.

II. Summary of Changes to the Proposed Rule

A. Removal of the Minimum Detection Sensitivity Level Defaults

The proposed rule contained equations that could be used by facilities to adjust the detection sensitivity level (*i.e.,* 60 g/hr) based on the composition of the compounds in the process lines. EPA also provided facilities the option of meeting a minimum detection sensitivity level in lieu of adjusting the detection sensitivity level.

In the final rule, we removed the minimum detection sensitivity level. This change was made after reviewing concerns expressed by commenters that the minimum detection sensitivity level would allow an emissions loophole for high purity systems. (See Section III.A for rationale.)

B. Annual EPA Method 21 Monitoring While Complying With the AWP

In the final rule, we are requiring owners or operators choosing to use the AWP to screen equipment using EPA Method 21 (*i.e.*, Method 21) instead of the optical gas imaging instrument in one screening period a year. Owners or operators conducting the Method 21 screening must meet the requirements in the applicable subpart and keep records of all screened equipment. (See Section III.A of this preamble for rationale.) Records of the annual Method 21 screening are to be submitted to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

C. Re-Screening Repaired Equipment

In the final rule, we are allowing owners or operators to re-screen equipment after being repaired using either the current work practice or the AWP if the leaks were detected using the AWP. Leaks detected by the current work practice must be re-screened using the current work practice. (See Section III.B of this preamble for rationale.)

D. Recordkeeping for AWP Compliance

In the final rule, we are requiring that owners or operators keep records of the equipment, process units, or facilities that are to be included in the AWP to document that a facility has chosen to comply with the AWP. This documentation must be kept for as long as the AWP is used and the Administrator may request to review it. We are also requiring that owners or operators keep video records of the daily instrument check and the leak survey results. The video records must be kept for at least 5 years. (See Section III.E of this preamble for rationale.)

III. Response to Significant Comments

The proposal provided a 60-day comment period ending, June 5, 2006. We received comments from 23 commenters. Commenters included State agencies, industry, industry trade groups, environmental groups and individuals. We have summarized the significant comments below. A complete summary of comments is provided in the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199.

A. Basis of Standard

Comment: One commenter suggested that the basis of EPA's assessment of optical gas imaging is from data for sources never regulated for leaking equipment and is significantly outdated compared to current LDAR implementation.

Response: As discussed in the proposal preamble (71 FR 17403), the most reasonable approach to determine if the AWP is equivalent to the original work practice (based on Method 21) is to model the emission reductions that would occur if you were to apply both programs on an uncontrolled facility. This allows for a direct comparison between the effectiveness of the two approaches. As explained in the proposal, the original uncontrolled baseline Method 21 data used to develop the existing work practice would have been appropriate to make the comparison. Unfortunately, this 25-year-old database is no longer available. The only uncontrolled data available is from natural gas processing plants, which are used in the modeled comparison. These plants were screened with Method 21 instruments in the early 1990s as part of an EPA/industry effort to develop emission factors for the refinery and gas processing industry.

Comment: Several commenters opposed immediate and complete phase-out of Method 21 because equivalency has not been proven and the optical gas imaging instruments have questionable ability to image materials emitted at the detection sensitivity level (*i.e.*, threshold leak rates). Several commenters explained that the studies referenced by EPA do not take into account the fact that a single leak's emission rate will vary over time and depend on process conditions (such as chemical activity, temperature, and pressure), and the type and size of the equipment. One commenter suggested that EPA has presented no evidence to support the presumption that leaking equipment below the sensitivity of the optical gas imaging instrument will proceed to leak at a higher rate over time and be discovered due to increased frequency of monitoring. One commenter stated that if smaller leaks will not be detected with the gas imaging instrument, then a site may end up with many undetected small fugitive equipment leaks and could result in higher emissions rates.

Another commenter asserts that optical gas imaging is not currently technically equivalent to Method 21 because the camera cannot detect small leaks of less than 60 grams/hour (g/hr). The commenter also stated that the side-by-side comparison of Method 21 and the optical gas imaging technology shows there are significant differences in the detection rate. The commenter questioned whether the increased frequency of monitoring to detect larger leaks will actually compensate for the camera's inability to detect small leaks. The commenter added that high risk leaks of carcinogens will continue to leak until they become large enough to be detected by the camera.

Response: When using any imaging instrument, leak detection requires two primary factors for its use: (1) The leak definition and (2) the monitoring frequency. Together, these factors form the foundation of an LDAR program for identifying fugitive emissions from leaking equipment. The current work practice uses various leak definitions based on parts per million (ppm) and corresponding monitoring frequencies (monthly, quarterly, or annually) for identifying leaking equipment. Emissions reductions occur when leaking equipment is identified and repaired. In developing the AWP, EPA sought to design a program for using the optical gas imaging instrument that would provide for emissions reductions of leaking equipment at least as equivalent as the current work practice. To do so, we used the Monte Carlo model for determining what leak rate definition and what monitoring frequency were necessary for the AWP. The following provides a brief explanation of how we used that model to obtain the 60 g/hr leak rate threshold and a bi-monthly monitoring frequency. For a more detailed explanation of the

methodology used to develop the AWP, refer to the preamble for the proposed AWP (71 FR 17401).

Based on a 1993 petroleum industry study, EPA developed a statistical relationship between measured (bagged) mass emissions and the associated measured Method 21 screening values. This statistical relationship established the probability of registering a Method 21 screening value for a given range of mass emissions. The statistical relationship was then used to simulate detection of leaks by the Method 21 work practice in the computer model. The modeling program compares the screening value of Method 21 to various leak definitions to determine if a leak would be detected. Similarly, the model assigns a mass rate detection limit to the AWP. For each piece of equipment with a leak at or above the assigned mass detection limit, the program specifies detection by the AWP. Modeling results showed a work practice repeated bimonthly with a detection limit of 60 g/hr range was equivalent to the existing work practice. The model generated different detection limits for the 500 and 10,000 ppm thresholds in existing rules. The final rule reflects the mass detection limit for 500 ppm, *i.e.*, the most stringent limit in the Federal LDAR rules, thus, providing equivalency for both leak definitions.

The final AWP is not phasing out the existing Method 21-based LDAR work practice standards. Rather, the final rule allows owners/operators to choose to use the AWP in place of the current work practice wherever applicable. When used, the AWP provides equivalent control and appears to be less burdensome to implement. Additionally, industry has purchased many optical gas imagers and has had the opportunity to become proficient with their use. For these reasons, we expect the AWP to quickly come into widespread use. We see no reason why this is not a good outcome, especially given, as discussed below, that the final AWP includes an annual Method 21 monitoring requirement.

We disagree with the commenter's assertion that optical gas imaging cannot detect leaks at or less than 60 g/hr. The tests conducted using various optical imaging devices have shown that many gas imaging instruments detect emissions significantly below the 60 g/hr limit (Docket ID No. EPA–HQ–OAR–2003–0199–0027). Moreover, equivalence has been shown at a 60 g/hr leak rate, so it is not necessary that the optical gas imager detect leaks smaller than this level.

We also disagree that the side-by-side comparison of Method 21 and the AWP shows significant differences in mass of emissions detected. Available test data that we have reviewed shows that most of the mass emissions were detected by both Method 21 and the AWP (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). The commenter did not provide data to support their assertion otherwise.

However, we recognize that modeling cannot address all of the uncertainties associated with equipment leaks because we lack sufficient information necessary to address all of the potential issues such as leak rates varying with time or with different operating scenarios. While commenters suggest these factors could affect the modeled equivalency determination, we are not aware of any specific data that shows this affect is real or that would allow us to include it in the equivalence modeling. As an example, one question not addressed by the modeling effort is the possibility that leak rates of the emitters below the imaging threshold of 60 g/hr will increase with time but stay below 60 g/hr and, therefore, not be imaged by the AWP. If the leak rate for the equipment currently leaking below the detectable threshold of the AWP gradually increases but stays below the detectable threshold, some situations may arise where cumulative emissions could exceed those emitted under the current program. We do not have evidence to support this scenario; however, we believe it prudent to protect against this scenario. Therefore, the final AWP requirements provide a transition to the new imaging technology. We have added an annual Method 21 screening to the AWP to address the concern of small leaks growing but not large enough to be detected with optical imaging. This requirement would take the place of one of the optical imaging screening surveys. The Method 21 screening must be conducted using the leak detection and repair requirements in the applicable subpart to which the equipment is subject and must be conducted for all equipment that are included in the AWP. Records of the annual Method 21 screening results must be kept. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts. We recognize that including an annual Method 21 screening survey in the AWP will decrease the cost savings that may have occurred under the proposed requirement; however, we fully expect that the costs of the final AWP will be substantially less than those of the current work practice, so we hope that the added costs will not deter facilities from adopting the final AWP.

As industry adopts the AWP and reports to us their records of the results of the annual Method 21 monitoring, we will review this data to assess the extent to which small leaks go undetected and become larger while remaining undetected. We will consider these results, along with other relevant information, in any future revisions to the AWP.

Comment: One commenter requested EPA explain the relationship between the 60 g/hr threshold and the 500, 1,000, 2,000, and 10,000 ppm concentration cutoffs in the existing LDAR regulations. The commenter suggested that EPA set up different leak definitions to recognize that some equipment inherently leak less material than others and thus only need to be repaired after reaching the specified leak level. The commenter also indicated that the increased leak definition for auto-polymerizing compounds were included in most LDAR regulations to recognize that these materials are less likely to leak into the atmosphere. The commenter concluded that the 60 g/hr leak threshold does not recognize any of the specific situations that have caused EPA to promulgate these provisions.

Two commenters suggested that the equivalency analysis does not show that the gas imaging leak threshold of 60 g/hr is equivalent to a Method 21 measurement of 500 ppm, especially when connectors and other equipment are considered. Another commenter added that another study showed that an equivalent leak threshold for flanges is 24 g/hr instead of 60 g/hr. The commenter requested that EPA justify applying the same leak threshold to virtually all types of equipment. The commenter also stated that another study showed the equivalent leak threshold for valves was 36 g/hr, and suggested using this stricter standard.

Response: The explanation of the relationship between the 60 g/hr leak threshold and various leak definitions is provided in EPA's discussion of the Monte Carlo analysis (Docket ID No. EPA–HQ–OAR–2003–0199–0005). Additionally, as explained in the response above, the equivalency determination was based on comparing the current work practice leak definition and monitoring frequency requirements with various leak rates and monitoring frequencies generated by the Monte Carlo model. We modeled the most stringent leak definition (500 ppm) to

determine the leak threshold for the AWP under the assumption that if a source could meet the most stringent leak threshold, it could meet less stringent leak definitions in any of the Federal equipment leak standards.

The 60 g/hr leak threshold, when monitored bi-monthly, is the modeled equivalent for the vast majority of LDAR programs. Other equipment subject to LDAR rules is monitored at a higher leak definition (*i.e.*, 1,000 ppm, 2,000 ppm, 10,000 ppm) and monitored less frequently (*i.e.*, quarterly or annually). Thus, facilities using the AWP to monitor these other pieces of equipment should see results at least as stringent as using the current work practice. We lacked sufficient bagging data on other equipment to develop correlations using the model. However, the bagging data for those other pieces of equipment could be, and was, used to validate the results from the Monte Carlo analysis.

One commenter referred to an industry study showing that if a different dataset consisting of information from southern California refineries were used in the Monte Carlo analysis, the equivalent leak threshold for valves would be 36 g/hr and flanges would be 24 g/hr. There are several reasons why the California data is not appropriate for the analysis. First we would note that the dataset from the California refineries was from refineries where equipment leak standards were already in place and leak thresholds would be lower. Such a dataset from controlled facilities would not be appropriate for the equivalency analysis. As discussed in the proposal preamble and in previous responses, a technically defensible equivalency determination of any AWP requires modeling of an uncontrolled facility. Second, the equipment leak work practice requirements in the California rules, which the refineries would be subject to, are not identical to those in EPA regulations with Method 21. There were significant differences between Method 21 requirements and the requirements for equipment leaks in California such that screening results from the two are not equivalent. To make a comparison with EPA's Monte Carlo analysis, the California data was modified to approximate the requirements of Method 21. However, this modification is only an approximation and does not exactly replicate Method 21 results. Third, we also note that the leak threshold of 24 g/hr for flanges was calculated assuming quarterly monitoring. However, the EPA requirements for flanges only require monitoring about every 2 years. To conduct a proper model for flanges, the analysis would need to be run on a 2-year basis. As stated in the report (Docket ID No. EPA–HQ–OAR–2003–0199–0032), ''the equivalent AWP (leak threshold) increases as the AWP monitoring frequency increases.'' This trend implies an equivalent leak threshold based on the existing 2-year monitoring requirement would be much higher than the 24 g/hr number and likely above 60 g/hr.

Regarding auto-polymerizing compounds, we lack sufficient information to equate mass leak rates to concentration levels for them. The commenter did not provide any additional information that would allow us to do so. Therefore, we are not providing leak thresholds specific to auto-polymerizing compounds. We acknowledge the AWP may result in more stringent control than the current work practice required in equipment leak standards for polymers and resins because the model analysis used to develop the AWP was conducted at a leak definition of 500 ppm, the most stringent leak definition in Federal rules, and using data from natural gas processing plants. If the owner or operator considers the AWP not to be appropriate for their facility they can continue to use the current work practice to identify leaking equipment.

Comment: One commenter suggested that using the optical gas imaging instrument may miss intermittent leaks, which may add significantly to fugitive emissions. The commenter added that the AWP needs to account for how at certain times potentially large leaks can be disguised as small leaks.

Response: Previous EPA studies have shown that most emissions are from equipment with the larger leaks. (Docket ID No. EPA–HQ–OAR–2003–0199–0044) Prior to leak detection and repair programs, 95 percent of the mass emissions were emitted from 5 percent of the equipment, *i.e.*, equipment leaking at greater than 10,000 ppm. Additionally, tests conducted to ascertain the performance of optical gas imaging cameras show that the cameras identified all leaks greater than 60 g/hr (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). These results show that the AWP will achieve EPA's goals of detecting leaking equipment from which the majority of emissions arise. As a point of comparison, we would also note that the current work practice can erroneously register low ppm readings below the leak threshold for large emitters, *i.e.*, the current work practice can show a broad range of readings for the same mass emission. Therefore, the current work practice also would not identify all leaking equipment. Also, neither the current work practice nor the AWP will identify intermittent leaks because these leaks occur when equipment is not monitored.

The final rule also requires that any leak, no matter how small, viewed by the optical gas imaging instrument is considered a leak and must be repaired. The performance tests show that the camera can in practice ''see'' leaks as low as 10 g/hr, which is below the 60 g/hr leak threshold determined to be equivalent to the current work practice. As a result, the cameras will identify equipment leaking below the 60 g/hr leak threshold and those leaks are required to be repaired. Thus, a large leak that could be ''disguised'' as a smaller leak under the current work practice would not be misidentified and avoid repair.

Comment: One commenter suggested that a loophole in the AWP allows inspectors to bypass proper adjustments for high purity systems containing undetectable chemicals. The commenter explained that the optical gas imaging instrument can only detect volatile organic compounds (VOC) that absorb or emit infrared light. In the synthetic organic chemicals manufacturing industry, high purity systems are common, and leaks can go undetected if the dominant chemical does not register with optical gas imaging technology. The commenter added that the proposal contains a loophole that gives the inspector the option of using a minimum mass flow rate threshold of either 10 g/hr for pumps or 6 g/hr for all other equipment instead of adjusting the threshold to accommodate the instrument's detection limits. The commenter questioned EPA's assumption that all leaks encountered during an inspection contain at least 10 percent detectable chemicals. The commenter recommended that EPA remove this loophole by eliminating section 60.18(i)(2)(i)(B) from the rules. The commenter also recommended that Method 21 be used for high purity situations where chemicals have not been verified as adequately detectable using the optical gas imaging technology. The commenter concluded that if EPA chooses to keep the loophole, it should address whether the technology fails to detect a high number of leaks that are smaller than 6 g/hr.

Response: After further review of the commenter's concerns, we have determined that the commenter is correct regarding the minimum detection sensitivity level provided in the tables. The potential exists for high

purity systems to have leaks not identified if the minimum detection sensitivity level is used instead of being calculated. Consequently, the final rule requires that the detection sensitivity level be calculated using the equation in section 60.18(i)(2)(i). The minimum detection sensitivity level concept has been removed from the final rule. We also note that the optical gas imaging instrument is allowed to be used only where it will respond to the equipment leaking. Therefore, if the instrument does not respond to high purity streams, it cannot be used to detect leaks. The current work practice using Method 21 must be used instead.

B. Applicability

Comment: One commenter requested that EPA clarify that a facility is not required to monitor equipment using Method 21 and the AWP.

Response: The standard is an alternative to the existing work practice and may be used in place of the existing work practice where feasible and whenever the owner or operator chooses to do so. We are not requiring that both be used at the same time. We are requiring that each facility choosing to use the AWP monitor the same regulated equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor once per year.

Comment: Several commenters suggested that leaks identified using the gas imaging instrument should be verified using traditional Method 21. Another commenter opposed allowing Method 21 to be used to check for leaks found with optical imaging. The commenter suggested that the methods could give contradictory results and would serve no purpose. The commenter added that because EPA states in the proposal that the AWP provides equivalent or better emissions control than Method 21, there is no justification for requiring both methods to be applied to the same equipment.

Two commenters also requested that EPA consider allowing facilities the option to use Method 21 or the Gas imaging AWP for post repair monitoring requirements. The commenters opposed the required approach of being limited to the same method for repair monitoring.

Response: We do not believe that leaks identified in the initial screening using the AWP need to be screened using the current work practice to verify the leak. By definition in the AWP, a leak is any emissions imaged by the optical gas imaging instrument. Requiring the facility to use a Method 21 monitor to verify what the optical gas imaging instrument has already detected would be an unnecessary duplication of effort and resources.

On the other hand, we have decided that it would be appropriate to allow either the current work practice or the AWP to be used for repair purposes when the AWP is used for the initial screening. Test information has demonstrated that a Method 21 instrument will detect leaks that the gas imaging instrument will detect (Docket ID No. EPA–HQ–OAR–2003–0199–0027, and the response to comments document which can be found in Docket EPA–HQ–OAR–2003–0199). Therefore, it is appropriate to allow its use when optical gas imaging instruments are used to find leaks. If a Method 21 instrument is used for repair monitoring, the leak definition in the applicable subpart to which the equipment is subject must be used to determine if the repair is successful. However, the AWP instrument will not be allowed to verify the repair has been made after the Method 21 instrument is used for the once-a-year monitoring.

Comment: Several commenters suggested that an owner or operator should be able to selectively apply the proposed AWP to a part of the facility, part of a process unit, or even individual equipment. The commenters added that selective application of the AWP is appropriate because optical gas imaging technology is new and few facilities have experience with it, differences within a facility suggest the use of Method 21, or the AWP to various parts of the plant, and it would encourage the development of the technology.

Response: We agree with the commenters' suggestion. The AWP may be used for the entire facility, a process unit, or a group of equipment. The decision is up to the owner or operator how broadly the AWP will be used. The owner or operator is required to keep records of where the AWP will be used as part of the documentation of the detection sensitivity level value.

Comment: Two commenters suggested that EPA should allow flexible use of the AWP by allowing facilities to move from traditional monitoring to optical imaging and vice versa without being subject to a permitting approval process. The commenters added that a facility cannot switch from one technology to another without assuring that monitoring frequencies and protocols are fully addressed upon switching.

Response: The flexibility that the commenters are requesting is beyond the scope of this action. The issues need to be raised in the context of the title V program and the specifics of individual facility permits.

Comment: Several commenters supported using the AWP for monitoring closed vent systems. Another commenter suggested that most pressure relief vents (PRV) are installed in closed vents routed to control devices. Therefore, optical sensing methods cannot evaluate emissions inside a closed vent conveyance. The commenter concluded that the AWP must allow mixed monitoring methods for closed vents. One commenter asserted that the AWP has to be applicable for a 500 ppm leak and any change to the standard for monitoring closed vent systems would be outside the scope of the AWP. One commenter recommended that the owner or operator be given the option of using either Method 21 or an optical imaging camera to monitor PRV after the pressure releases.

One commenter supported the lower leak rates for closed vent systems (*e.g.*, 3 g/hr) but noted that the leak rate would be for mass flow for a bi-monthly inspection schedule. The commenter added that closed vent systems are typically inspected on an annual basis and the equivalent leak rate, using the Monte Carlo analysis, for annual inspection would be 0.013 g/hr, which is below the range that the technology can reliably find leaks. The commenter added that to allow use of the optical gas imaging technology to monitor closed vent systems, EPA must create a revised inspection schedule which balances frequency with limitations of the optical technology. The commenter also added that if the optical imaging technology cannot reliably measure emissions at low leak rates, Method 21 should be used. The commenter stated that supplementing the optical gas imaging technology with Method 21 would catch more small leaks characteristic of closed vent systems.

Response: In the preamble to the proposed rule, we took comment on whether the AWP was appropriate for closed vent systems but did not include language to permit such use. We have evaluated the commenters' concerns and have decided that the AWP is not appropriate for monitoring closed vent systems, leakless equipment, or equipment designated as non-leaking. While the AWP will identify leaks with larger mass emission rates, tests conducted with both the AWP and the current work practice indicate the AWP, at this time, does not identify very small leaks and may not be able to identify if non-leaking/leakless equipment are truly nonleaking because the detection sensitivity of the optical gas imaging instrument is not sufficient. Therefore, in the final rule, as in the proposed rule,

we have decided not to allow the AWP to be used for closed vent systems, leakless equipment, or equipment designated as non-leaking.

Comment: Several commenters supported using the optical imaging technology to find, review, and fix non-regulated and previously non-detectable leaks without additional regulatory burden and fear of reprisal from enforcement actions. One commenter suggested that the camera be used as a form of enhanced visual inspection to quickly identify whether a group of equipment has passed or failed and that result be stored in a database. Then, the camera and recorded video could be used to target only the leaking equipment. Another commenter supported using the optical imaging device as a screening tool for leaks so that annual Method 21 leak checks could be targeted to equipment suspected of leaking.

Other commenters asserted that the AWP should require that all leaks detected with optical gas imaging be corrected according to the existing leak correction time requirements, regardless of whether or not the equipment would have been required to be monitored using Method 21. One commenter added that if the operator monitors leaks outside of the EPA requirement, the AWP should require the company maintain records. The commenter stated this would prevent operators from repairing leaks just prior to an official inspection and reporting artificially low levels. One commenter requested that the AWP also apply to inaccessible and unsafe to monitor equipment. The commenter also suggested that expanding the inventory would reduce the number of large leakers, and reduce the cost to the plant by enabling the plant to repair large leakers rather than an inventory of equipment which they are mandated to monitor and repair.

Response: The AWP requirements are intended to provide an alternative to the current work practices using Method 21. Requirements in the existing subpart that are specific to Method 21 do not apply to the AWP. All other requirements in the applicable subpart that are not specifically addressed in the AWP apply, such as schedule for repairs, designation of difficult to monitor equipment and unsafe to monitor equipment. Therefore, the schedule for repairing leaks is the same for both work practices. The final rule changes were not intended to expand the applicability of the existing rules. The Agency has promulgated the AWP to facilitate the use of emerging technology as quickly as appropriate. Once the regulated community and EPA have more experience with the AWP, we may consider expanding the applicability of the existing rules.

Comment: Several commenters provided input on definitions for ''difficult to access'' or ''unsafe to access'' or ''unsafe to repair'' or ''difficult to repair.'' Several commenters requested EPA include the concept of ''difficult to access'' in the AWP because access is still required to make repairs and in some cases this may not be possible. One commenter suggested replacing the term ''difficult to access'' with ''unsafe to access.'' One commenter also suggested adding a definition for ''unsafe to access'' equipment because the AWP would allow more frequent monitoring of these equipment due to the nature of the technology, but does not address the repair requirements for such equipment. One commenter suggested for equipment designated as ''difficult to access'' repair be required as soon as practical but no later than 90 days. Equipment identified as ''unsafe to access'' should be required to be repaired when it is safe to do so. One commenter requested EPA to describe how facilities switching to the AWP would manage their ''difficult to monitor'' lists.

Response: The interpretations of the terms ''difficult to monitor,'' ''difficult to repair,'' or ''unsafe to monitor'' are driven by work practice in use and therefore are not addressed in this section. We expect the population of equipment so designated under the existing work practice will change to accommodate the differing capabilities of the AWP instrument. Therefore, we are not addressing ''difficult to monitor,'' ''difficult to repair'' or ''unsafe to monitor.''

C. Rule Location

Comment: Several commenters supported locating the AWP in the General Provisions. However, many of the commenters requested that the AWP be located in the General Provisions to each applicable Part rather than only in Part 60. Other commenters preferred that Method 21 be revised to include the AWP rather than include language in the General Provisions.

Several commenters supported including the amendatory language in each applicable subpart and opposed having it in only one Part. The commenters suggested that the proposed method would result in numerous inconsistencies with the subparts and would be confusing.

Two commenters suggested that the proposed language in the 40 CFR part 60 General Provisions was legally insufficient. One of the commenters asserted that EPA must incorporate the AWP into all subparts where it will be readily apparent to the affected industry groups, regulators, and the public.

Response: We believe there is no simple way to incorporate the AWP into the numerous subparts. The General Provisions appear to be the most efficient way to accommodate the desired amendments, so in response to the comments received, we have decided to incorporate the AWP into the General Provisions of parts 60, 63, and 65. The AWP is also applicable to those subparts in part 61 that reference the General Provisions in part 60. Additionally, where specific subparts require modification (such as tables in Part 63 subparts that reference General Provisions sections), we have made the appropriate revisions. The suggestion to incorporate the AWP into Method 21 is both inappropriate and awkward because Method 21 contains a test method only and should not contain recordkeeping, reporting, and monitoring requirements.

D. Alternative Work Practice Procedures and Equipment Specifications

Comment: One commenter requested that use of the optical imaging technology be complemented with Method 21 as necessary to compensate for shortcomings in the camera design. The commenter noted the differences between active and passive cameras and their vulnerabilities, as well as interferences from carbon dioxide and steam/water, use outdoors, and the color of the background. The commenter recommended that the AWP should fully address the limitations of each technology and require that inspectors identify and make records of equipment types that are poor candidates for either kind of optical gas imaging technology.

Response: The AWP can only be used to detect leaks when the gas imaging instrument is shown to work (i.e., streams that contain compounds that can be detected by the gas imaging instrument). Therefore, if a specific type of gas imaging device does not work on a stream, operators will continue to use the Method 21-based work practice for these equipment. Although this commenter did not provide any data supporting the need to augment the AWP with the Method 21 instrument, as explained earlier, we are requiring annual monitoring with the Method 21 instrument. (See section III.A of this preamble for a discussion of this requirement.)

Comment: One commenter requested EPA to explain how a facility would identify which analytical methods

should be used for which compounds, especially when potentially incompatible compounds may be included in a mixture within a group of emission equipment. The commenter added that it would be unfair to penalize a facility by prohibiting the use of the AWP because the AWP cannot detect all VOC in a specific process unit.

Another commenter requested clarification that the requirement in 40 CFR 60.18(i)(1) that imaging the compounds in the streams does not mean or imply that every compound in the stream must be detected.

Response: The AWP does not require that every compound in the stream be detected. Only one compound needs to be able to be viewed. However, the 60 g/hr leak rate threshold must be adjusted, *i.e.*, scaled down, to account for compounds that are not seen. The language in the final rule was modified to clarify this point.

Comment: One commenter requested that petroleum refineries be exempt from the stream speciation and variability of process stream requirements because petroleum refineries were used in the development of the standard and because the mixed hydrocarbons contained in the streams have been demonstrated to meet all the monitoring criteria. The commenter specifically opposed requiring an engineering analysis. The commenter suggested adding language that allows the determination to be based on the process knowledge that an image from the camera is not a leak if that image is determined to be steam or other unregulated material.

Response: In the proposed rule, we provided a definition for ''engineering analysis'' that described the requirements for determining the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable. In the final rule, we have decided to put the requirements for the analysis directly in the rule rather than have a separate definition.

In the final rule, we are requiring owners or operators to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable. It is up to the owner or operator to provide sufficient information to meet this requirement. This information may include process knowledge, previous studies, or analyses conducted for the AWP. The documentation of the analysis is required to be kept as a record for as long as the AWP is used and must be updated to incorporate any changes that may affect the analysis. The Administrator may request to review the documentation. Because this requirement is now in the rule, it is not necessary to include it in the term ''engineering analysis.'' Therefore, in the final rule, the term ''engineering analysis'' has been removed.

We also disagree that petroleum refineries should be exempted from the stream speciation and variability of process stream requirements. The commenter's reasoning is not a sufficient justification for such an exemption because, although some refinery streams were used to develop the method, there are a wide variety of refineries with varying streams and without site specific analysis we have no assurance that the required leak rate can be imaged.

E. Recordkeeping and Reporting

Comment: One commenter requested the owner or operator of an affected source be required to submit notice to the Administrator that they have elected to use the AWP and state the duration the AWP will be used.

Response: For the final rule, we have required a memorandum to the owner's or operator's file identifying the equipment, process units, or facilities that are to be included in the AWP to document that a facility has chosen to comply with the AWP. This documentation must be kept for as long as the AWP is used and the Administrator may request to review it. It is not necessary to submit notification to the Administrator that the AWP will be used. Owners or operators are still required to meet the requirements in the subpart except where they are superseded by the AWP. Therefore, the same reports and records kept for the current work practice will be required for the AWP.

Comment: Several commenters requested that EPA allow owners/operators the option of keeping video records to provide flexibility; others opposed requiring keeping video records. Several commenters added that recordkeeping for the AWP should not be more burdensome than the applicable subparts. The commenters noted that the AWP will add significant burden to facilities and regulators. One commenter stated that facilities will incur burden from additional storage of electronic files. The commenter provided estimates of the amount of electronic storage space that would be necessary, indicating as much as 50 gigabytes would need to be stored per inspection. The commenter added that EPA should consider the time needed to transfer large files between field data collection devices and the plant's computer in the time necessary to use the AWP. One commenter expressed concern about maintaining videos of every leak survey, especially if the AWP requires that each piece of equipment be imaged separately. The commenter noted that the battery life of the camera and recorder are limited, storage of the videos will be burdensome, and data retrieval will require searching the videos and will be cumbersome.

Other commenters suggested that video records of the daily instrument check should be required. One commenter recommended EPA maintain the documentation requirements for monitoring of all equipment. The commenter asserted that video documentation is an important enforcement tool and is a safeguard against fraud. The commenter disputed industry assertions of the cost of keeping video records and suggested that computer storage represents only a fraction of the costs of the LDAR program.

Response: The final rule requires that if the owner or operator chooses to use the AWP, video records of all viewed regulated equipment and video records of the daily instrument check must be kept for 5 years. We recognize that data files for video records may be large. However, to ensure that the AWP is being complied with, we believe it is necessary to require video records of each piece of equipment that is viewed. We would also like to reiterate that the standard is an AWP. If owners or operators believe that the video recordkeeping requirements are too burdensome, they may continue to comply with the existing requirements as written. We also note that the AWP is not superceding the recordkeeping and reporting requirements that are in the existing equipment leak standards. The owner or operator must still keep those records. However, in the final rule a video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record.

F. Other Comments

Comment: One commenter asked EPA to clarify whether a requirement that the instrument be intrinsically safe will be incorporated into the AWP. One commenter suggested that a significant burden will be incurred by requiring instruments that are intrinsically safe. The commenter added that EPA is requiring that personnel take into hazardous areas data storage devices that are not intended for that purpose.

Response: We are not requiring that gas imaging instruments be intrinsically safe. It is incumbent upon the

manufacturer to develop instruments that are designed to meet the requirements of the chemical facility or refinery. Facilities may or may not require equipment be intrinsically safe. The owner or operator is not being required to use the AWP. If such instruments are not available, and the operator requires intrinsically safe instruments, then the owner or operator does not have to choose to use the AWP.

Comment: Several commenters requested that EPA provide guidance on how a facility would calculate emission rates for emission inventories if the AWP is in use. One commenter specifically asked how a facility would manage default zero equipment for emission estimation purposes. Several commenters added that if guidance is not provided, EPA should revise the AWP to include quantification procedures consistent with EPA's preferred methodology. One commenter asserted that optical gas imaging is limited by its inability to quantify leak concentration, which are converted to emission rates using the correlation equations. The commenter added that facilities must be required to use Method 21 or an equivalent emissions estimation technique to quantify leaks detected with optical gas imaging. Another commenter suggested that gas imaging technology has the ability to quantify emissions; therefore, quantification should be required in the AWP.

Response: The Agency recognizes the need for new approaches to estimate emissions from facilities that implement the AWP. We will work with stakeholders to develop the necessary tools for quantification. In the final rule, we are also requiring each facility complying with the AWP also monitor the same regulated equipment with a Method 21 monitor once per year. The data gathered from this requirement will help us address the issue of emissions quantification.

Comment: One commenter considered that public notification of the rulemaking was incomplete and inadequate because the title and summary of the proposed rule only addressed 40 CFR part 60 but the proposal would amend 40 CFR parts 61, 63, and 65 as well. The commenter added that before EPA promulgates the AWP, it needs to propose the AWP for parts 61, 63, and 65.

Response: We believe that sufficient notification was provided that the AWP would apply to subparts other than in 40 CFR part 60. The proposed rule specifies in 40 CFR 60.18(a)(2) that the AWP is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor. The rule clearly states that the AWP applies to 40 CFR parts 60, 61, 63, and 65. Similarly, the preamble to the proposed rule states that it applies to 40 CFR parts 60, 61, 63, and 65.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this 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 requirements are not enforceable until OMB approves them.

This final rule provides plant operators with an alternative method for identifying equipment leaks, but does not change the basic recordkeeping and reporting requirements in the various subparts of 40 CFR parts 60, 61, 63, and 65. However, EPA anticipates that this final rule will change the burden estimates developed and approved for the existing national emission standards by reducing the labor hours necessary to identify equipment leaks.

An ICR document (EPA ICR No. 2210.02) was prepared for this final rule to estimate the costs associated with reading and understanding the alternatives, purchasing an optical imaging instrument, and initial training of plant personnel. The ICR has been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The annual public burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 3,027 labor hours per year and a total annual cost of $2,260,189. EPA has established a public docket for this action (Docket EPA–HQ–OAR–2003–0199) which can be found at *http://www.regulations.gov.* The ICR for this final rule is included in the public docket. 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. In addition, EPA is amending 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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 the final rule on small entities, small entity is defined as follows: (1) A small business whose parent company has fewer than 100 to 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (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. It should be noted that the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

After considering the economic impact of this final 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, since the primary purpose of the regulatory flexibility analysis 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 concluded that this final rule imposes no additional burden on

facilities impacted by existing EPA regulations. This final rule allows plant operators to voluntarily use an AWP. In fact, EPA expects the AWP will relieve regulatory burden for all affected entities by reducing the labor hours necessary to identify equipment leaks.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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 by State, local, and tribal governments, in the aggregate, or by 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 EPA 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, EPA 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.''

This final 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 final rule will not impose direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

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 final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 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 EO 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 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. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 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, business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when EPA does not use available and applicable VCS.

This final rule does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

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 final action will not have disproportionately high and adverse 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. This final action would not relax the control measure on sources regulated by the rule and, therefore, would not cause emissions increases from these sources.

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 final rule and other required information to the United States Senate, the United States 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 final rule will be effective December 22, 2008.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, reporting and recordkeeping.

40 CFR Part 65

Administrative practice and procedure, Air pollution control.

Dated: December 15, 2008.

Stephen L. Johnson,

Administrator.

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

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 60.18 is amended:

■ a. By revising the section heading;

■ b. By revising paragraph (a); and

■ c. By adding paragraphs (g), (h), and (i) to read as follows:

§ 60.18 General control device and work practice requirements.

(a) *Introduction.* (1) This section contains requirements for control devices used to comply with applicable subparts of 40 CFR parts 60 and 61. The requirements are placed here for administrative convenience and apply only to facilities covered by subparts referring to this section.

(2) This section also contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(g) *Alternative work practice for monitoring equipment for leaks.* Paragraphs (g), (h), and (i) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (g), (h), and (i) of this section apply to this standard. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (g)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (g), (h), and (i) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, or 65 that requires monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(h) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (i) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (i)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 1 to subpart A of this part in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (h)(1)(i) of this section must also be monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(i) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (i)(1) through (i)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements in (i)(1)(i) and (i)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (i)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily Instrument Check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (i)(2)(i) of this section in accordance with the procedure specified in paragraphs (i)(2)(ii) through (i)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (i)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (i)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 1 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (i)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i = Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (i)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 1 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate specified in paragraph (i)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (i)(2)(ii) through (i)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 60.13(i).

(3) Leak Survey Procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. You must keep the records described in paragraphs (i)(4)(i) through (i)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 1 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (i)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (i)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (i)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (i)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be

identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (h)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (h)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subpart.

(5) Reporting. Submit the reports required in the applicable subpart. Submit the records of the annual Method 21 screening required in paragraph (h)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

3. Subpart A is amended by adding Table 1 to subpart A to read as follows:

TABLE 1 TO SUBPART A TO PART 60—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring frequency per subpart [a]	Detection sensitivity level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

PART 63—[AMENDED]

■ 4. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 5. Section 63.11 is amended:
■ a. By revising the section heading;
■ b. By revising paragraph (a); and
■ c. By adding paragraphs (c), (d), and (e) to read as follows:

§ 63.11 Control device and work practice requirements.

(a) *Applicability.* (1) The applicability of this section is set out in § 63.1(a)(4).

(2) This section contains requirements for control devices used to comply with applicable subparts of this part. The requirements are placed here for administrative convenience and apply only to facilities covered by subparts referring to this section.

(3) This section also contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(c) *Alternative Work Practice for Monitoring Equipment for Leaks.* Paragraphs (c), (d), and (e) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (c), (d), and (e) of this section continue to apply. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (c)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (c), (d), and (e) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, and 65 that requires monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(d) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to 40 CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (e) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (e)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subparts to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 1 to subpart A of this part in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment, the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (d)(1)(i) of this section must also be

monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(e) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (e)(1) through (e)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (e)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily Instrument Check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (e)(2)(i) of this section in accordance with the procedure specified in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (e)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (e)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 1 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (e)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i = Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (e)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 1 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate calculated in paragraph (e)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 63.177 or § 63.178, whichever is applicable.

(3) Leak Survey Procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. Keep the records described in paragraphs (e)(4)(i) through (e)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 1 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (e)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (e)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (e)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (e)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (h)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (h)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts.

(5) Reporting. Submit the reports required in the applicable subpart.

Submit the records of the annual Method 21 screening required in paragraph (h)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

■ 6. Subpart A is amended by adding Table 1 to subpart A to read as follows:

TABLE 1 TO SUBPART A OF PART 63—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring frequency per subpart [a]	Detection sensitivity level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table, in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

Subpart G—[Amended]

■ 7. Table 1A to subpart G is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 1A TO SUBPART G OF PART 63—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart A, provisions applicable to subpart G
* * * * * * *
§ 63.11 (c), (d), and (e)
* * * * * * *

Subpart H—[Amended]

■ 8. Table 4 to subpart H is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 4 TO SUBPART H OF PART 63—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

40 CFR part 63, subpart H, provisions applicable to subpart H
* * * * * * *
§ 63.11 (c), (d), and (e)
* * * * * * *

Subpart R—[Amended]

■ 9. Table 1 to subpart R is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 1 TO SUBPART R OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* * * * * * *		
§ 63.11 (c), (d), and (e)	Yes.	
* * * * * * *		

Subpart U—[Amended]

■ 10. Table 1 to subpart U is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
*	*	*
§ 63.11	Yes	§ 63.11(b) specifies requirements for flares used to comply with provisions of this subpart. § 63.504(c) contains the requirements to conduct compliance demonstrations for flares subject to this subpart. § 63.11(c), (d), and (e) specifies requirements for an alternative work practice for equipment leaks.
*	*	*

Subpart HH—[Amended]

■ 11. Table 2 to subpart HH is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
*	*	*
§ 63.11(c), (d), and (e)	Yes.	
*	*	*

Subpart GGG—[Amended]

■ 12. Table 1 to subpart GGG is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
*	*	*	*
§ 63.11	Control device and equipment leak work practice requirements.	Yes.	
*	*	*	*

Subpart HHH—[Amended]

■ 13. Table 2 to the appendix to subpart HHH is amended by adding a new entry in numerical order for "§ 63.11 (c), (d), and (e)" to read as follows:

APPENDIX: TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions reference	Applicable to subpart HHH	Explanation
*	*	*
§ 63.11(c), (d), and (e)	Yes.	
*	*	*

Subpart JJJ—[Amended]

■ 14. Table 1 to subpart JJJ is amended by revising the entry for "§ 63.11" to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to Subpart JJJ	Explanation
*	*	*
§ 63.11	Yes	§ 63.11(b) specifies requirements for flares used to comply with provisions of this subpart. § 63.1333(e) contains the requirements to conduct compliance demonstrations for flares subject to this subpart. § 63.11(c), (d), and (e) specifies requirements for an alternative work practice for equipment leaks.
*	*	*

Subpart VVV—[Amended]

■ 15. Table 1 to subpart VVV is amended by adding a new entry in numerical order for ''63.11 (c), (d), and (e)'', and by revising the entry for ''§ 63.11'' to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
*	*	*
§ 63.11	Yes	Control device and equipment leak work practice requirements.
*	*	*
§ 63.11(c), (d) and (e)	Yes	Alternative work practice for equipment leaks.
*	*	*

Subpart EEEE—[Amended]

■ 16. Table 12 to subpart EEEE is amended by adding a new entry in numerical order for ''§ 63.11 (c), (d), and (e)'' to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63–APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

Citation	Subject	Brief description	Applies to subpart EEEE
*	*	*	*
§ 63.11(c), (d), and (e)	Control and work practice requirements.	Alternative work practice for equipment leaks.	Yes.
*	*	*	*

Subpart FFFF—[Amended]

■ 17. Table 12 to subpart FFFF is amended by revising the entry for ''§ 63.11'' to read as follows:

TABLE 12 TO SUBPART FFFF OF PART 63–APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
* * *	* * *	* * *
§ 63.11	Control device requirements for flares and work practice requirements for equipment leaks.	Yes.
* * *	* * *	* * *

Subpart UUUU—[Amended]

■ 18. Table 10 to subpart UUUU is amended by revising the entry for ''§ 63.11'' to read as follows:

TABLE 10 TO SUBPART UUUU OF PART 63–APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU

Citation	Subject	Brief description	Applies to Subpart UUUU
* * *	* * *	* * *	* * *
§ 63.11	Control and work practice requirements.	Requirements for flares and alternative work practice for equipment leaks.	Yes.
* * *	* * *	* * *	* * *

Subpart GGGGG—[Amended]

■ 19. Table 3 to subpart GGGGG is amended by revising the entry for ''§ 63.11'' to read as follows:

TABLE 3 TO SUBPART GGGGG OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

Citation	Subject	Brief description	Applies to subpart GGGGG
* * *	* * *	* * *	* * *
§ 63.11	Control and work practice requirements.	Requirements for flares and alternative work practice for equipment leaks.	Yes
* * *	* * *	* * *	* * *

Subpart HHHHH—[Amended]

■ 20. Table 10 to subpart HHHHH is amended by revising the entry for ''§ 63.11'' to read as follows:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH

Citation	Subject	Explanation
* * * * * * *		
§ 63.11	Control and work practice requirements	Yes
* * * * * * *		

PART 65—[Amended]

■ 21. The authority citation for part 65 continues to read as follows:

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

Subpart A—[Amended]

■ 22. Section 65.7 is amended:
■ a. By revising the section heading;
■ b. By adding a new sentence to the end of paragraph (b); and
■ c. By adding paragraphs (e), (f), and (g) to read as follows:

§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives, and alternative work practice for equipment leaks.

* * * * *

(b) * * * Owners and operators are also provided the option of complying with an alternative work practice for monitoring leaking equipment in § 65.7 (e), (f), and (g) rather than monitoring equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

* * * * *

(e) *Alternative work practice for monitoring equipment for leaks.* This section contains requirements for an alternative work practice used to identify leaking equipment. This alternative work practice is placed here for administrative convenience and is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor. Paragraphs (e), (f), and (g) of this section apply to all equipment for which the applicable subpart requires monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor, except for closed vent systems, equipment designated as leakless, and equipment identified in the applicable subpart as having no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background. An owner or operator may use an optical gas imaging instrument instead of a 40 CFR part 60, Appendix A–7, Method 21 monitor. Requirements in the existing subparts that are specific to the Method 21 instrument do not apply under this section. All other requirements in the applicable subpart that are not addressed in paragraphs (e), (f), and (g) of this section continue to apply. For example, equipment specification requirements, and non-Method 21 instrument recordkeeping and reporting requirements in the applicable subpart continue to apply. The terms defined in paragraphs (e)(1) through (5) of this section have meanings that are specific to the alternative work practice standard in paragraphs (e), (f), and (g) of this section.

(1) *Applicable subpart* means the subpart in 40 CFR parts 60, 61, 63, and 65 that requires monitoring of each piece of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(2) *Equipment* means pumps, valves, pressure relief valves, compressors, open-ended lines, flanges, connectors, and other equipment covered by the applicable subpart that require monitoring with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(3) *Imaging* means making visible emissions that may otherwise be invisible to the naked eye.

(4) *Optical gas imaging instrument* means an instrument that makes visible emissions that may otherwise be invisible to the naked eye.

(5) *Repair* means that equipment is adjusted, or otherwise altered, in order to eliminate a leak.

(6) *Leak* means:

(i) Any emissions imaged by the optical gas instrument;

(ii) Indications of liquids dripping;

(iii) Indications by a sensor that a seal or barrier fluid system has failed; or

(iv) Screening results using a 40 CFR part 60, Appendix A–7, Method 21 monitor that exceed the leak definition in the applicable subpart to which the equipment is subject.

(f) The alternative work practice standard for monitoring equipment for leaks is available to all subparts in 40 CFR parts 60, 61, 63, and 65 that require monitoring of equipment with a 40 CFR part 60, Appendix A–7, Method 21 monitor.

(1) An owner or operator of an affected source subject to 40 CFR parts 60, 61, 63, or 65 can choose to comply with the alternative work practice requirements in paragraph (g) of this section instead of using the 40 CFR part 60, Appendix A–7, Method 21 monitor to identify leaking equipment. The owner or operator must document the equipment, process units, and facilities for which the alternative work practice will be used to identify leaks.

(2) Any leak detected when following the leak survey procedure in paragraph (g)(3) of this section must be identified for repair as required in the applicable subpart.

(3) If the alternative work practice is used to identify leaks, re-screening after an attempted repair of leaking equipment must be conducted using either the alternative work practice or the 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subparts to which the equipment is subject.

(4) The schedule for repair is as required in the applicable subpart.

(5) When this alternative work practice is used for detecting leaking equipment, choose one of the monitoring frequencies listed in Table 3 to subpart A of this part, in lieu of the monitoring frequency specified for regulated equipment in the applicable subpart. Reduced monitoring frequencies for good performance are not applicable when using the alternative work practice.

(6) When this alternative work practice is used for detecting leaking equipment, the following are not applicable for the equipment being monitored:

(i) Skip period leak detection and repair;

(ii) Quality improvement plans; or

(iii) Complying with standards for allowable percentage of valves and pumps to leak.

(7) When the alternative work practice is used to detect leaking equipment, the regulated equipment in paragraph (f)(1)(i) of this section must also be monitored annually using a 40 CFR part 60, Appendix A–7, Method 21 monitor at the leak definition required in the applicable subpart. The owner or operator may choose the specific

monitoring period (for example, first quarter) to conduct the annual monitoring. Subsequent monitoring must be conducted every 12 months from the initial period. Owners or operators must keep records of the annual Method 21 screening results, as specified in paragraph (i)(4)(vii) of this section.

(g) An owner or operator of an affected source who chooses to use the alternative work practice must comply with the requirements of paragraphs (g)(1) through (g)(5) of this section.

(1) Instrument Specifications. The optical gas imaging instrument must comply with the requirements specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section.

(i) Provide the operator with an image of the potential leak points for each piece of equipment at both the detection sensitivity level and within the distance used in the daily instrument check described in paragraph (g)(2) of this section. The detection sensitivity level depends upon the frequency at which leak monitoring is to be performed.

(ii) Provide a date and time stamp for video records of every monitoring event.

(2) Daily instrument check. On a daily basis, and prior to beginning any leak monitoring work, test the optical gas imaging instrument at the mass flow rate determined in paragraph (g)(2)(i) of this section in accordance with the procedure specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each camera configuration used during monitoring (for example, different lenses used), unless an alternative method to demonstrate daily instrument checks has been approved in accordance with paragraph (g)(2)(v) of this section.

(i) Calculate the mass flow rate to be used in the daily instrument check by following the procedures in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this section.

(A) For a specified population of equipment to be imaged by the instrument, determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level.

(B) Multiply the standard detection sensitivity level, corresponding to the selected monitoring frequency in Table 3 of subpart A of this part, by the mass fraction of detectable chemicals from the stream identified in paragraph (g)(2)(i)(A) of this section to determine the mass flow rate to be used in the daily instrument check, using the following equation.

$$E_{dic} = (E_{sds}) \sum_{i=1}^{k} x_i$$

Where:

E_{dic} = Mass flow rate for the daily instrument check, grams per hour

x_i= Mass fraction of detectable chemical(s) i seen by the optical gas imaging instrument, within the distance to be used in paragraph (g)(2)(iv)(B) of this section, at or below the standard detection sensitivity level, E_{sds}.

E_{sds} = Standard detection sensitivity level from Table 3 to subpart A, grams per hour

k = Total number of detectable chemicals emitted from the leaking equipment and seen by the optical gas imaging instrument.

(ii) Start the optical gas imaging instrument according to the manufacturer's instructions, ensuring that all appropriate settings conform to the manufacturer's instructions.

(iii) Use any gas chosen by the user that can be viewed by the optical gas imaging instrument and that has a purity of no less than 98 percent.

(iv) Establish a mass flow rate by using the following procedures:

(A) Provide a source of gas where it will be in the field of view of the optical gas imaging instrument.

(B) Set up the optical gas imaging instrument at a recorded distance from the outlet or leak orifice of the flow meter that will not be exceeded in the actual performance of the leak survey. Do not exceed the operating parameters of the flow meter.

(C) Open the valve on the flow meter to set a flow rate that will create a mass emission rate equal to the mass rate calculated in paragraph (g)(2)(i) of this section while observing the gas flow through the optical gas imaging instrument viewfinder. When an image of the gas emission is seen through the viewfinder at the required emission rate, make a record of the reading on the flow meter.

(v) Repeat the procedures specified in paragraphs (g)(2)(ii) through (g)(2)(iv) of this section for each configuration of the optical gas imaging instrument used during the leak survey.

(vi) To use an alternative method to demonstrate daily instrument checks, apply to the Administrator for approval of the alternative under § 65.7(b).

(3) Leak survey procedure. Operate the optical gas imaging instrument to image every regulated piece of equipment selected for this work practice in accordance with the instrument manufacturer's operating parameters. All emissions imaged by the optical gas imaging instrument are considered to be leaks and are subject to repair. All emissions visible to the naked eye are also considered to be leaks and are subject to repair.

(4) Recordkeeping. Keep the records described in paragraphs (g)(4)(i) through (g)(4)(vii) of this section:

(i) The equipment, processes, and facilities for which the owner or operator chooses to use the alternative work practice.

(ii) The detection sensitivity level selected from Table 3 to subpart A of this part for the optical gas imaging instrument.

(iii) The analysis to determine the piece of equipment in contact with the lowest mass fraction of chemicals that are detectable, as specified in paragraph (g)(2)(i)(A) of this section.

(iv) The technical basis for the mass fraction of detectable chemicals used in the equation in paragraph (g)(2)(i)(B) of this section.

(v) The daily instrument check. Record the distance, per paragraph (g)(2)(iv)(B) of this section, and the flow meter reading, per paragraph (g)(2)(iv)(C) of this section, at which the leak was imaged. Keep a video record of the daily instrument check for each configuration of the optical gas imaging instrument used during the leak survey (for example, the daily instrument check must be conducted for each lens used). The video record must include a time and date stamp for each daily instrument check. The video record must be kept for 5 years.

(vi) Recordkeeping requirements in the applicable subpart. A video record must be used to document the leak survey results. The video record must include a time and date stamp for each monitoring event. A video record can be used to meet the recordkeeping requirements of the applicable subparts if each piece of regulated equipment selected for this work practice can be identified in the video record. The video record must be kept for 5 years.

(vii) The results of the annual Method 21 screening required in paragraph (f)(7) of this section. Records must be kept for all regulated equipment specified in paragraph (f)(1) of this section. Records must identify the equipment screened, the screening value measured by Method 21, the time and date of the screening, and calibration information required in the existing applicable subparts.

(5) Reporting. Submit the reports required in the applicable subpart. Submit the records of the annual Method 21 screening required in paragraph (f)(7) of this section to the Administrator via e-mail to *CCG-AWP@EPA.GOV.*

■ 23. Subpart A is amended by adding Table 3 to subpart A of Part 65 to read as follows:

TABLE 3 TO SUBPART A OF PART 65—DETECTION SENSITIVITY LEVELS (GRAMS PER HOUR)

Monitoring Frequency per Subpart [a]	Detection Sensitivity Level
Bi-Monthly	60
Semi-Quarterly	85
Monthly	100

[a] When this alternative work practice is used to identify leaking equipment, the owner or operator must choose one of the monitoring frequencies listed in this table, in lieu of the monitoring frequency specified in the applicable subpart. Bi-monthly means every other month. Semi-quarterly means twice per quarter. Monthly means once per month.

[FR Doc. E8–30196 Filed 12–19–08; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 73, No. 246
Monday, December 22, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0008]

RIN 1904–AB71

Energy Conservation Program: Test Procedures for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Department of Energy (DOE) is proposing new test procedures for measuring the efficiency of small electric motors, including both single-phase and polyphase and to update the industry references and clarify the scope of coverage for DOE's existing test procedure for electric motors. With this notice, DOE also announces a public meeting to receive comments on this proposal and the issues presented herein.

DATES: DOE will accept comments, data, and information regarding the NOPR until March 9, 2009. See section IV, ''Public Participation,'' of this proposed rule for details. DOE will hold a public meeting in Washington, DC, beginning on Thursday, January 29, 2009, from 9 a.m. to 5 p.m., and continuing the following day if necessary. DOE must receive requests to speak at this public meeting no later than 4 p.m., Thursday, January 15, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., Thursday, January 22, 2009.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the workshop, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.)

Any comments submitted must identify the NOPR on Test Procedures for Electric Motors, and provide the docket number EERE–2008–BT–TP–0008 and/or Regulation Identifier Number (RIN) 1904–AB71. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: small_electric_motors_tp.rulemaking@ee.doe.gov*. Include the docket number EERE–2008–BT–TP–0008 and/or RIN 1904–AB71 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

If DOE is able to hold this public meeting in conjunction with a public meeting to discuss its preliminary findings in the energy conservation standards rulemaking for small electric motors, then the agenda for this public meeting will include topics relating to both the test procedure and the energy conservation standards rulemakings. The public meeting would start with a discussion of this test procedure notice of proposed rulemaking (NOPR). When that discussion is complete, DOE would immediately begin discussion on the preliminary analyses that DOE completed in advance of a NOPR for the energy conservation standards rulemaking.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION, CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. E-mail: *Jim.Raba@ee.doe.gov*. In the Office of the General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Michael.Kido@hq.doe.gov*.

For information about how to submit or review public comments and how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

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I. Introduction

A. Authority

Part A–1 of Title III of the Energy Policy and Conservation Act, as amended (EPCA), provides for an energy conservation program for specific industrial equipment.[1] (42 U.S.C. 6311–6317) This notice proposes two actions: (1) Creating new test procedures for measuring the efficiency of small electric motors (typically, motors with ratings of ¼ to 3 horsepower (hp) that are built using a two-digit frame number series and are distinguished from electric motors, which are built using a three-digit frame number series at some of the same horsepower ratings), and (2) revising and expanding the scope of DOE's test procedure for 1–200 hp electric motors to also apply to motors with ratings between 201 and 500 hp. Part A–1 serves as DOE's authority for these proposed actions.

B. Background

1. Small Electric Motors

On July 10, 2006, the Department of Energy (DOE) published in the **Federal Register** a positive determination that energy conservation standards for certain single-phase and polyphase small electric motors appear to be technologically feasible, economically justified and would result in significant energy savings.[2] 71 FR 38799.

Section 346 of EPCA requires DOE to prescribe testing requirements for those small electric motors for which the Secretary makes a positive determination. (42 U.S.C. 6317(b)(1)) Thus, DOE stated in its determination notice that it will initiate the development of test procedures for certain small electric motors. 71 FR 38807. This notice constitutes DOE's first action to propose a test method for measuring the energy efficiency of small electric motors under section 346(b)(1) of EPCA. In parallel with developing test procedures for small electric motors, DOE is analyzing what, if any, levels of efficiency would meet the EPCA criteria.

2. Electric Motors

Section 343(a)(5)(A) of EPCA requires that testing procedures for electric motor efficiency shall be the test procedures specified in the National Electrical Manufacturers Association (NEMA) Standards Publication MG1–1987, and the Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 112 Test Method B for motor efficiency. (42 U.S.C. 6314(a)(5)(A)) DOE codified and adopted the latest revisions of those test methods (as well as test methods based on the Canadian Standards Association (CSA) Standard C390–93, ''Energy Efficient Test Methods for Three-Phase Induction Motors'') in a Final Rule published on October 5, 1999. 64 FR 54114.

Section 343(a)(5)(B) of EPCA provides that if the test procedure requirements under section 343(a)(5)(A) are amended, the Secretary must amend the electric motor test procedures to conform to such amended test procedures in the NEMA and IEEE standards, unless the Secretary determines, by rule, that the amended test procedures are not reasonably designed to produce results that reflect energy efficiency, energy use, and estimated operating costs, and would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(5)(B)) NEMA Standards Publication MG1–1987 was most recently updated November 20, 2007, and IEEE Standard 112 was most recently updated in November 2004. Under section 343(a)(5)(B) of EPCA, DOE proposes to update the test procedures in Title 10 of the Code of Federal Regulations, Part 431 (10 CFR Part 431) to incorporate the test conditions contained in the most current versions of these industry test method standards.

II. Summary of Proposed Rule

First, today's notice proposes new test procedures for measuring the energy efficiency of certain general purpose, small, single-phase and polyphase electric motors built in a two-digit NEMA frame series. The proposed test procedures for small electric motors are essentially incorporated by reference to IEEE Standard 112, ''Test Procedure for Polyphase Induction Motors and Generators,'' IEEE Standard 114, ''Test Procedure for Single-Phase Motors,'' and CAN/CSA Standard C747, ''Energy Efficiency for Single- and Three-Phase Small Motors.'' Second, it proposes updates to the citations of industry standards that are incorporated by reference under 10 CFR 431.15, which include: NEMA Standards Publication MG1, ''Motors and Generators;'' IEEE Standard 112, ''Test Procedure for Polyphase Induction Motors and Generators;'' and CAN/CSA Standard C390, ''Energy Efficiency Test Methods for Three-Phase Induction Motors.'' Finally, it proposes to update the test

[1] This part of Title III of EPCA was originally titled Part C, but was later redesignated Part A–1 after Part B was repealed by Pub. L. 109–58, which resulted in a legislative reorganization of EPCA. Consequently, consumer product requirements are found in Part A and commercial equipment requirements are in Part A–1 of Title III of EPCA.

[2] Single phase small electric motors are rotational machines that operate on single phase electrical power, which refers to a single alternating voltage sinusoidal waveform. Similarly, polyphase small electric motors are also rotational machines but operate on three-phase electrical power, which refers to the sinusoidal waveforms of three supply conductors that are offset from one another by 120 degrees. Examples of applications for these small electric motors include pumps, fans, conveyors and other installations which require low power (*i.e.*, approximately 3 hp and below).

procedures under 10 CFR 431.16 by clarifying that these procedures are applicable to general purpose motors Subtype I and Subtype II, fire pump motors, and NEMA Design B, general purpose electric motors rated more than 200 hp but not greater than 500 hp, as added to EPCA by the Energy Independence and Security Act of 2007 (EISA 2007). All of the proposed revisions discussed below are contained in the proposed regulatory text following the preamble to this notice. DOE seeks comments on all aspects of this proposal.

III. Discussion

A. Small Electric Motors

Small electric motors are general purpose rotating machines that use either single-phase or poly-phase electricity and provide torque to drive applications such as blowers, fans, conveyors and pumps. For the purposes of this rulemaking, DOE evaluates only those small electric motors that are not incorporated into products that are otherwise covered by other Federal regulatory standards. Small motors incorporated into regulated products such as refrigerators or air conditioning systems are not within the scope of this rulemaking. The following discussion provides some of the background and history of DOE's treatment of this product.

On July 10, 2006, DOE published in the **Federal Register** a positive determination that energy conservation standards for small electric motors appeared to be technologically feasible, economically justified, and would result in significant energy savings. 71 FR 38807. Thereafter, DOE began to develop a test procedure for small electric motors and, at the same time, an analysis of potential energy conservation standards levels. On August 10, 2007, DOE published in the **Federal Register** a notice announcing a public meeting on its determination and the availability of the rulemaking Framework Document. In that notice, DOE also separately sought comments addressing the manner in which it should analyze potential energy conservation standards for small electric motors. 72 FR 44990. DOE received one written and several oral comments in response to this notice, all of which are discussed below.

During the public meeting held September 13, 2007, a representative from Emerson Motors spoke on behalf of NEMA's member motor manufacturers. He indicated that IEEE Standard 112 is the test method motor manufacturers would use to measure the efficiency of polyphase small electric motors. Further, he noted that IEEE Standard 114 for single-phase motors is not an active standard, but there were no major concerns should DOE use it to measure the efficiency of small electric motors. (Emerson, Public Meeting Transcript, No. 1 at p. 16) [3] In written comments, NEMA affirmed that its members use IEEE Standard 112 for measuring the efficiency of polyphase small electric motors and IEEE Standard 114 for measuring the efficiency of single phase small electric motors. (NEMA, No. 2 at p. 2) In view of the above comments, DOE evaluated IEEE Standard 112, IEEE Standard 114, as well as CAN/CSA Standard C747, ''Energy Efficiency for Single- and Three-Phase Small Motors,'' and concluded that these test procedures provide the necessary methodology and technical requirements to accurately determine the energy efficiency of the small electric motors covered in its rulemaking. Therefore, DOE proposes to create new Subpart T, ''Small Electric Motors,'' in 10 CFR Part 431, which will set forth definitions, prescribe test procedures, and promulgate energy conservation standards for small electric motors.

EPCA does not have identical requirements for determining the energy efficiency of small electric motors and electric motors (*i.e.*, 1–500 hp). Section 345(c) of EPCA requires that electric motor manufacturers (*i.e.*, not small electric motor manufacturers) ''certify, through an independent testing or certification program nationally recognized in the United States, that [any electric motor subject to EPCA efficiency standards] meets the applicable standard.'' (42 U.S.C. 6316(c)) The statutory standards for electric motors are laid out in 42 U.S.C. 6313(b). Further, 10 CFR 431.17(a)(5) allows manufacturers to establish compliance either through a certification program that is nationally recognized, such as CSA, Underwriters Laboratories, Inc., or an accredited laboratory that meets the requirements of 10 CFR 431.18, such as the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP). These certification requirements must be met for ''electric motors'' covered under EPCA and 10 CFR Part 431, but do not include ''small electric motors.'' Because small electric motors are covered under section 346 of EPCA (42 U.S.C. 6317), the same certification requirements that apply to electric motors do not apply, although DOE may propose such requirements for small electric motors in the future. Consistent with the treatment of other products under section 346 of EPCA, DOE proposes to allow a manufacturer to self-certify the test results for its small electric motors (*i.e.*, not require ''independent testing'').

In the following section, DOE presents the major sections of the proposed 10 CFR Part 431, Subpart T (new), which would cover certain small electric motors, including definitions, test procedures for measuring efficiency, and an alternative efficiency determination method (AEDM).

1. Definitions Concerning Small Electric Motors

DOE proposes to establish section 431.342, ''Definitions,'' under a new Subpart T of 10 CFR Part 431, and to define the necessary terms applicable to small electric motors, including ''alternative efficiency determination method,'' ''average full load efficiency,'' ''basic model,'' and ''small electric motor.''

a. Alternative Efficiency Determination Method

An AEDM is a means of calculating the total power loss and average full load efficiency of a small electric motor. It is derived from a mathematical model that represents the mechanical and electrical characteristics of a basic model of a small electric motor and is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data. The accuracy and reliability are substantiated through actual testing of a statistically valid sample of basic models of small motors. The use of an AEDM is intended to alleviate any undue burden from a manufacturer who may otherwise be required to test all of its basic models. The proposed definition for this term is identical to the definition under 10 CFR 431.12, except the component term ''electric motor'' has been replaced by ''small electric motor.''

b. Average Full Load Efficiency

''Average full load efficiency'' refers to the arithmetic average of the full load

[3] A notation in the form ''Emerson, Public Meeting Transcript, No. 1 at p. 16'' identifies an oral comment that DOE received during the September 13, 2007, Framework public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking. Likewise, a notation in the form ''(NEMA, No. 2 at p. 2)'' refers to a written comment that DOE received and included in the docket for this rulemaking (Docket number EERE–2008–BT–TP–0008), maintained in the Resource Room of the Building Technologies Program. Specifically, this footnote refers to a comment made by the National Electrical Manufacturers Association, and recorded on page 2 of document number 2.

efficiencies of a population of small electric motors of duplicate design. It assumes a normal (Gaussian) distribution of efficiencies. The proposed definition for this term is identical to the definition under 10 CFR 431.12, except the component term ''electric motor'' has been replaced by ''small electric motor.''

c. Basic Model

DOE proposes to define the term ''basic model'' for small electric motors in the same manner as it applies to electric motors in 10 CFR 431.12. Basic models of small electric motors are manufactured by a single manufacturer and have the same rating, essentially identical electrical characteristics, and no differing physical or functional characteristics affecting energy consumption or efficiency.[4] The four proposed requirements for a basic model of small electric motor are the same as those for an electric motor. Due to the similarities in construction, manufacture, customer sales and other key aspects of electric motors and small electric motors, DOE believes that constructing a definition for ''basic model'' of small electric motor around the existing definition of ''electric motor'' is appropriate. In the nearly ten years since the regulatory standard became effective for 1–200 hp motors, DOE has received fewer than five complaints where a covered motor was alleged to be out of compliance with the regulatory standard. Each case was investigated by DOE and subsequently resolved by the manufacturer's voluntary removal of the product from the market. For this reason, DOE finds that the definition of ''basic model,'' as it applies to an electric motor, has proven effective in ensuring that electric motors manufactured, produced, assembled, or imported are in compliance with the effective national energy conservation standards. The proposed definition minimizes the burden for small electric motor manufacturers when determining compliance with an energy conservation standard while ensuring that the energy consumption of these products is accurately captured.

d. Small Electric Motor

In today's NOPR, DOE proposes to codify the statutory definition of ''small electric motor'' into Subpart T of 10 CFR Part 431. Section 340(13)(G) of EPCA, as amended by EISA 2007 (42 U.S.C. 6311(13)(G)), defines the term ''small electric motor'' as ''a NEMA [National Electrical Manufacturers Association] general purpose alternating-current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.''

2. Test Procedures for the Measurement of Energy Efficiency

In today's notice, DOE proposes that a manufacturer measure the energy efficiency of a covered small electric motor according to one of three test methods. Consistent with the choice of test methods presented for electric motors in 10 CFR Part 431, subpart B, appendix B, a manufacturer would be permitted to select either an IEEE or CSA test method that is appropriate for single-phase or polyphase small electric motors. The represented efficiency of a basic model of small electric motor must be based on one of the IEEE test methods (*i.e.*, IEEE Standard 114–2001 or IEEE Standard 112–2004), or the CSA test method (*i.e.*, CAN/CSA Standard C747–94, ''Energy Efficiency Test Methods for Single- and Three-Phase Small Motors'').

DOE examined the above test procedures and concluded that each offers clear, consistent, and accurate means of measuring the energy efficiency of small electric motors. Three categories of small electric motors will be subject to the test procedures: single-phase capacitor-start, induction-run (CSIR); single-phase capacitor-start, capacitor-run (CSCR); and polyphase small motors. IEEE Standard 114–2001 applies to CSIR and CSCR small motors, and IEEE Standard 112–2004 applies to polyphase small motors, and CAN/CSA Standard C747–94 applies both to single-phase and polyphase small motors. DOE's proposal that a manufacturer may test its small motors according to either IEEE Standard 112 or 114, as applicable, is consistent with recommendations from interested parties. (Emerson, Public Meeting Transcript, No. 1 at p. 16; NEMA, No. 2 at p. 2). Moreover, DOE proposes adopting the above IEEE test methods because (1) each represents an approach that is consistent with the existing test methods for electric motors, which have been in effect without issue since November 1999 as part of 10 CFR part 431; (2) they are the most current versions in use by industry and have been periodically updated to reflect the best approaches for measuring and determining the efficiency of small motors; and (3) DOE believes that they will provide accurate and repeatable measurements because they tightly define tolerances, setup equipment, methods and procedures which manufacturers have developed to fairly compare the performance characteristics of their products.

DOE's proposal that a manufacturer be allowed to use the CAN/CSA Standard C747–94 test method as an alternative to the IEEE standards is based on two factors: (1) Using the CAN/CSA Standard C747–94 or one of the IEEE standards will result in an accurate and consistent measurement of energy efficiency, and (2) the long-standing North American Free Trade Agreement has established one large market including Canada and the United States, which makes the use of this procedure consistent with that agreement's purpose to reduce trade barriers while maintaining the integrity of the energy conservation program. Further, 10 CFR Part 431 provides a manufacturer the flexibility to test its electric motors according to CSA Standard C390–93. Therefore, DOE believes adopting a similar approach for small electric motor manufacturers is appropriate.

3. Alternative Efficiency Determination Method

Section 343(a)(2) of EPCA requires that the test procedures prescribed for electric motors by DOE be ''reasonably designed to produce test results which reflect energy efficiency,'' yet not be ''unduly burdensome'' to conduct. (42 U.S.C. 6314(a)(2)) Manufacturers produce large numbers of basic models of small electric motors, numbering in the thousands. These large numbers are due in part to the frequency with which units are modified because of material price fluctuations, which often necessitates the development of a new basic model. Testing the efficiency of an electric motor, unit by unit, typically requires ten to twelve hours (per unit) to complete and can cost as much as $2,000.00 per test. Further, DOE understands that many small electric motor designs are generated by proprietary software programs that have been refined over the years through engineering analysis and actual testing.

In view of the substantial number of basic models of small electric motors that would be subject to an individual testing requirement for each basic model, DOE is concerned that a manufacturer of small electric motors would likely face a substantial burden in conducting these tests to demonstrate compliance with the regulatory standard. To reduce this testing burden while meeting the energy conservation goals of EPCA, DOE proposes to adopt procedures that would allow a

[4] Note: 10 CFR 431.12 defines the term ''rating'' for a basic model as a combination of the motor's group, horsepower rating (or standard kilowatt equivalent), and number of poles for which an efficiency rating applies.

manufacturer to certify compliance by using an AEDM and a statistically meaningful sampling procedure for selecting test specimens that would be consistent with the existing requirements in 10 CFR 431.17 that currently apply to electric motors.

An AEDM is a predictive mathematical model that has been developed from engineering analyses of design data and substantiated by actual testing. It represents the energy consumption characteristics of one or more basic models. Before using an AEDM, a manufacturer must determine its accuracy and reliability through actual testing of a statistically valid sample of at least five basic models. For each basic model, the manufacturer must test a sample size of no fewer than five units selected at random according to the criteria proposed that would appear in a new section 431.345, ''Determination of Small Electric Motor Efficiency.'' After confirming the AEDM's accuracy, the manufacturer may use that AEDM to determine the efficiencies of other basic models of small electric motors, without further testing.

To confirm its accuracy, DOE requires that the basic models tested to validate the AEDM have a predicted total power loss that falls within ten percent of the mean total power loss determined from the actual testing. The total power loss for each basic model is calculated by applying the AEDM. This tolerance level is consistent with the current AEDM accuracy and reliability requirements for electric motors. See 10 CFR 431.17. DOE understands that the power loss predicted from an AEDM will differ from the power loss predicted from testing sample units of a basic model, due to natural manufacturing and material variability of the actual units within each model sample. The magnitude of such differences depends on the degree of variability, quantified as the standard deviation, and the sample size. As the number of units in each sample and the number of samples increases, the difference between the calculated and measured values should decrease, but as a practical matter it never disappears.

DOE invites comments on its proposal to allow manufacturers of small electric motors to use an AEDM, and the requirements for a manufacturer to substantiate the accuracy of its AEDM, including the number of basic models to be tested, and the accuracy of the predictive capabilities of the AEDM relative to actual testing.

4. Energy Conservation Standards and Their Effective Dates.

In a separate rulemaking, scheduled to be completed in 2010, DOE is considering establishing energy conservation standards for small electric motors. In today's NOPR, DOE proposes to create a new section 431.346, entitled ''Energy Conservation Standards and Their Effective Dates,'' and reserve it for small electric motor standards. For information about the energy conservation standards rulemaking for small electric motors, please visit DOE's Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/small_electric_motors.html.*

B. Definitions

EISA 2007 amended EPCA to prescribe energy conservation standards for specific consumer products and commercial equipment, including electric motors. In today's NOPR, DOE proposes new or amended definitions to address updates to the test procedures for measuring the efficiency of electric motors. The updates include changing citations, correcting cross-referencing errors in 10 CFR Part 431, and proposing definitions to clarify the application of the test procedures for electric motors and any associated energy conservation standards. Each revision is addressed below and DOE requests comments on each.

1. Definitions in Subpart A—General Provisions

a. Definition of ''Act''

DOE proposes to revise the definition of the term ''Act'' in 10 CFR 431.2. In 10 CFR Part 431, revised January 1, 2008, the term ''Act'' means ''the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291–6316.'' The correct U.S. Code citation for this term should include 42 U.S.C. 6317, which encompasses distribution transformers, high-intensity discharge lamps and small electric motors. DOE believes this correction is necessary to eliminate any potential confusion that may result from the omission of section 6317, particularly because it addresses small electric motors. The revised definition of the term ''Act'' can be found in 10 CFR 431.2 of the proposed regulation section of today's notice.

b. Definition of ''Covered Equipment''

DOE proposes to amend the definition of the term ''covered equipment'' in 10 CFR 431.2. The term ''covered equipment'' is used throughout 10 CFR Part 431 for specific commercial and industrial equipment that are regulated under 10 CFR Part 431. The definition of ''covered equipment'' identifies each type of equipment that is considered covered and provides a citation to the definition of that equipment. In view of its determination that energy conservation standards for certain small electric motors are technologically feasible and economically justified, and would result in significant energy savings, DOE proposes to amend the definition of ''covered equipment'' to include small electric motors. (71 FR 38799 (July 10, 2006))

As addressed in section III.A.1.d of today's notice, DOE proposes to codify the statutory definition of a ''small electric motor'' in a new section 431.342. The citation to this section would be cross-referenced within the definition of ''covered equipment'' at 10 CFR 431.2. This proposed revision to the definition of ''covered equipment'' is necessary to inform interested parties that small electric motors are regulated equipment under 10 CFR Part 431. The revised definition of ''covered equipment'' can be found in 10 CFR 431.2 of the proposed regulation section of today's notice.

c. Definition of ''EPCA''

DOE proposes to revise the definition of the term ''EPCA'' in 10 CFR 431.2. In 10 CFR Part 431, revised January 1, 2008, the term ''EPCA'' means ''the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6316.'' Consistent with its revision to the meaning of the term ''Act'' in 10 CFR 431.2, DOE proposes to correct the U.S. Code citation from ''42 U.S.C. 6316'' to ''42 U.S.C. 6317.'' DOE believes this correction to the United States Code citations is necessary to eliminate any potential confusion that may result from the omission of section 6317, particularly because section 6317 contains provisions affecting small electric motors. The revised definition of EPCA can be found in 10 CFR 431.2 of the proposed regulation section of today's notice.

2. Definitions in Subpart B—Electric Motors

a. Introductory Sentence to the Definitions Section

On October 18, 2005, DOE published a technical amendment final rule that codified the prescriptive standards contained in the Energy Policy Act of 2005 (Pub. L. 109–58). The final rule contained standards and direction for developing test procedures for several new products, which were subsequently codified in 10 CFR Part 431. In that final rule, DOE redesignated subparts K, L,

and M (which address Enforcement, General Provisions, and Petitions, respectively) as subparts U, V, and W. 70 FR 60416–17. However, the introductory sentence in 10 CFR 431.12 continues to refer to old subparts K, L, and M. Therefore, DOE proposes to revise the introductory language to redirect the references to subparts U, V, and W, respectively. DOE believes that this editorial correction is necessary to eliminate the potential for confusion.

b. Definition of ''Accreditation''

DOE proposes to revise the definition of the term ''accreditation,'' in 10 CFR 431.12, by updating its citations to industry test procedures.[5] Currently, the definition of ''accreditation'' refers to ''Test Method B of Institute of Electrical and Electronics Engineers (IEEE) Standard 112–1996, Test Procedure for Polyphase Induction Motors and Generators,'' and ''Test Method (1) of CSA Standard C390–93, Energy Efficient Test Methods for Three-Phase Induction Motors.'' In today's NOPR, DOE proposes to update the industry standards incorporated by reference to IEEE Standard 112–2004 and CAN/CSA Standard C390–98(R2005). To ensure consistency, DOE also proposes to make corresponding updates to the industry standard citations in the definition of ''accreditation.'' The revised definition of the term ''accreditation'' would be inserted into 10 CFR 431.12.

c. Definition of ''Basic Model''

With respect to an electric motor, the term ''basic model'' is defined in 10 CFR 431.12 in relevant part, as ''one of the 113 combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction.'' Section 313 of EISA 2007 amended sections 340(13) and 342(b) of EPCA (42 U.S.C. 6311(13) and 6313(b), respectively) to add terms, definitions, and energy conservation standards relevant to electric motors, including ''General Purpose Electric Motor (Subtype II)'' and ''NEMA Design B, General Purpose Electric Motors.'' This action amended the scope of covered electric motors and the applicable energy conservation standards to encompass more than the original 113 combinations of horsepower, number of poles, and type of construction. To account for this expanded scope that EISA 2007 introduced, DOE proposes to revise the definition of ''basic model'' in 10 CFR 431.12 by replacing the phrase ''means one of the 113 combinations of'' with the phrase ''means a combination of'' because there are now more than 113 combinations covered and regulated. DOE believes that this revision will eliminate any potential confusion, while preserving the requirement that an electric motor basic model be rated according to a discrete combination of horsepower, number of poles, and type of construction. Since the proposed definition retains the same requirements of a basic model that are present in the existing definition, this proposed change will have no impact on the scope of covered electric motors, and will not affect the measurement of efficiency or be unduly burdensome to manufacturers.

d. Definition of ''Electric Motor''

Section 313(a)(2) of EISA 2007 amended section 340(13)(A) of EPCA (42 U.S.C. 6311(13)(A)) by replacing the term and definition of ''electric motor'' with two new electric motor categories—''General Purpose Electric Motor (Subtype I)'' and ''General Purpose Electric Motor (Subtype II).'' DOE plans to issue a technical amendment final rule codifying these EISA 2007 amendments into 10 CFR 431.12. This means that the term ''electric motor,'' which frequently appears throughout various subparts of 10 CFR Part 431, is left undefined. DOE is concerned that this may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards.

Section 313(a)(2) also established a new EPCA section 340(13) (42 U.S.C. 6311(13)(A)) and definitions for ''general purpose electric motor (subtype I)'' and ''general purpose electric motor (subtype II).'' Further, EISA 2007 section 313(b)(1)(B) amended EPCA section 342(b) (42 U.S.C. 6313(b)) by inserting the terms ''fire pump motors'' and ''NEMA Design B, general purpose electric motors.'' In view of the EISA 2007 directives and to eliminate confusion, DOE proposes to insert a definition into Section 431.12 for ''electric motor'' that aggregates the four types of electric motors now covered by EPCA. DOE believes that adopting such a definition will make clear that the test procedures for electric motors apply to the four types of motors and will not alter the scope of covered electric motors EISA 2007 created. The proposed definition of ''electric motor'' will not have any impact on the actual measurement of efficiency nor will it be unduly burdensome to manufacturers, because it simply combines the four types of covered motors into one term.

e. Definition of ''Fire Pump Motor''

Section 313(b)(1) of EISA 2007 amended section 342(b) of EPCA (42 U.S.C. 6313(b)) by prescribing energy conservation standards for fire pump motors. However, EISA 2007 did not define the term ''fire pump motor.'' To address this gap, DOE investigated what characteristics constitute a fire pump motor and, in the process, examined manufacturers' product literature and nationally accepted industry standards documents, including Underwriter Laboratories (UL) Standard 1004A, ''Fire Pump Motors,'' and the National Fire Protection Association (NFPA) 20, ''Standard for the Installation of Stationary Pumps for Fire Protection.'' DOE could not locate any one source that provided a broadly applicable definition of ''fire pump motor.'' Manufacturers' literature provided specifications for the fire pump motors each had for sale, often advertising specific types of motors for particular fire protection applications or product designations unique to that manufacturer. The UL Standard 1004A sets forth safety standards for NEMA Design B motors used in fire pump applications, in accordance with NFPA 20, but does not explicitly define the term ''fire pump motor.'' The NFPA Standard 20 sets forth performance requirements for motors intended for use in fire pump applications, but does not explicitly define the term ''fire pump motor.''

Absent a clear industry definition of ''fire pump motor,'' DOE proposes to add a definition to 10 CFR 431.12 that would be based primarily on the scope of UL Standard 1004A–2001, paragraph 1.1, which reads: ''This Standard covers Design B polyphase motors, as defined in NEMA MG1, ''Motors and Generators,'' rated 500 hp (373 kW) or less, 600 volts or less, that are intended for use in accordance with NFPA 20, ''Standard for the Installation of Centrifugal Fire Pumps.'' DOE's proposal makes two modifications to this definition. First, DOE proposes to insert an approval/publication date, i.e., NFPA 20–2007, to make clear which version is required. Second, DOE proposes revising the referenced title of the 2007 NFPA Standard 20 in the UL paragraph from ''Standard for the Installation of Centrifugal Fire Pumps'' to the 2007 title, ''Standard for the Installation of Stationary Pumps for Fire Protection.''

[5] In section II.A.5 of the preamble to the October 5, 1999 Final Rule for Electric Motors, DOE noted that ''accreditation would generally have to be based on the version of the test method currently incorporated into the DOE regulation.'' 64 FR 54119.

f. Definition of ''General Purpose Motor''

Currently, 10 CFR 431.12 defines the term ''general purpose motor'' in part by incorporating by reference NEMA MG1–1993, paragraphs 14.02, ''Usual Service Conditions,'' and 14.03, ''Unusual Service Conditions.'' Since the promulgation of this definition, NEMA MG1–1993 has been updated to NEMA MG1–2006, which renumbered these paragraphs to 14.2 and 14.3, respectively. DOE compared the two paragraphs in NEMA MG1–1993 to the updated NEMA MG1–2006 and concluded that the 1993 and 2006 definitions of ''Usual Service Conditions'' and ''Unusual Service Conditions'' are identical, except for the paragraph numbers. Therefore, DOE proposes to update the references in 10 CFR 431.12 to ensure consistency with current industry standards and eliminate any potential for confusion. This proposed change will have no impact on the scope of motors covered, or measurement of efficiency, or be unduly burdensome to manufacturers.

g. Definition of ''General Purpose Electric Motor (Subtype I)''

Section 313(a)(2) of EISA 2007 amended section 340(13) of EPCA (42 U.S.C. 6311(13)(A)) to add the term ''general purpose electric motor (subtype I).'' Accordingly, DOE plans to publish a technical amendment final rule amending 10 CFR 431.12 to codify this EISA 2007 amendment. In view of the above definition of ''general purpose motor,'' the definition of ''general purpose electric motor'' also incorporates by reference paragraphs 14.02 and 14.03 of NEMA Standards Publication MG1–1993. For the same reasons discussed above for general purpose motors, DOE proposes to update the references in 10 CFR 431.12 to ''paragraph 14.02'' and ''paragraph 14.03'' in NEMA Standards Publication MG1–1993 to ''paragraph 14.2'' and ''paragraph 14.3'' in NEMA Standards Publication MG1–2006. This proposed change will have no impact on the scope of motors covered, or measurement of efficiency, or be unduly burdensome to manufacturers, because the content of the MG1–2006 paragraphs is the same as those in MG1–1993.

h. Definition of ''NEMA Design B General Purpose Electric Motor''

Section 313(b)(1)(B) of EISA 2007 amended section 342(b) of EPCA (42 U.S.C. 6313(b)) to prescribe energy conservation standards for NEMA Design B general purpose electric motors with a power rating of more than 200 hp but not greater than 500 hp. EISA 2007 does not otherwise define the term ''NEMA Design B general purpose electric motor.'' Therefore, DOE is proposing to insert a definition for these electric motors based on NEMA Standards Publication MG1–2006, paragraph 1.19.1.2, ''Design B,'' which reads as follows:

> A Design B motor is a squirrel-cage motor designed to withstand full-voltage starting, developing locked-rotor, breakdown, and pull-up torques adequate for general application as specified in 12.38, 12.39, and 12.40, drawing locked-rotor current not to exceed the values shown in paragraphs 12.35.3 for 60 hertz and 12.35.3 for 50 hertz, and having a slip at rated load of less than 5 percent. Motors with 10 or more poles shall be permitted to have slip slightly greater than 5 percent.[6]

DOE plans to publish a technical amendment final rule that amends 10 CFR 431.12 codifying the EISA 2007 energy conservation standard for NEMA Design B general purpose electric motors. In this NOPR, DOE proposes to amend 10 CFR 431.12 by adopting the NEMA definition of ''NEMA Design B general purpose electric motor'' from MG1–2006, with the following changes: (1) Removing the reference to 50 hertz and corresponding performance characteristics, because the EISA 2007-prescribed efficiency standards (NEMA MG–1 (2006) Table 12–11) cover only 60 hertz motors; (2) limiting the maximum slip requirement to motors with fewer than 10 poles, because EISA 2007-prescribed standards cover 2-, 4-, 6-, and 8-pole motors; and (3) correcting the referenced locked-rotor current paragraphs from ''12.35.3'' to ''12.35.1,'' because there is no ''12.35.3'' in MG1–2006 and the table under paragraph 12.35.1 contains the maximum currents associated with a locked-rotor.

i. Definition of ''Nominal Full Load Efficiency''

DOE proposes to revise the definition of ''nominal full load efficiency'' in 10 CFR 431.12, by updating the reference to ''Column A of Table 12–8, NEMA Standards Publication MG1–1993,'' which prescribes the efficiency levels of covered electric motors. DOE compared Table 12–8 (1993) with its updated version, Table 12–10 in NEMA MG1–2006, and found that the tables have identical efficiency levels, but the reference number had changed from ''12–8'' to ''12–10'') and the titles ''Column A Nominal Efficiency'' and ''Column B Minimum Efficiency Based on 20% Loss Difference'' were modified to simply read ''Nominal Efficiency'' and ''Minimum Efficiency Based on 20% Loss Difference.'' Therefore, DOE proposes to update the definition of ''nominal full load efficiency'' in 10 CFR 431.12, by changing ''Column A of Table 12–8, NEMA Standards Publication MG1–1993'' to read: ''Nominal Efficiency'' column of Table 12–10, NEMA Standards Publication MG1–2006.'' In DOE's view, this proposed change will eliminate confusion over the reference in 10 CFR 431.12 and otherwise have no impact on the measurement of efficiency or burden on manufacturers, because the substantive content (*i.e.*, efficiency values) of the table is not affected.

C. Referenced Documents

Section 431.15 of 10 CFR Part 431, ''Materials incorporated by reference,'' is based on the test procedures and standards for motors that were in effect as of October 5, 1999. In today's NOPR, DOE proposes to revise 10 CFR 431.15 by deleting cited material that is no longer needed or has otherwise been updated and inserting references to the current industry standards.

1. NEMA Standards Publication MG1. In view of the EISA 2007 amendments to EPCA, DOE proposes to incorporate by reference the pertinent provisions from NEMA Standards Publication MG1–2006 in place of the current reference to NEMA Standards Publication MG1–1993. For example, EISA 2007 313(a)(2) deleted reference to the definition of ''electric motor'' in EPCA section 340(13)(A). In turn, DOE's technical amendment final rule deleted the term ''electric motor'' in 10 CFR 431.12. Due to this change, many sections in NEMA Standards Publication MG1–1993 are no longer used or referenced either in the test procedures prescribed at 10 CFR 431.16 or the energy conservation standards at 10 CFR 431.25. There are four updated citations and one new citation, which are addressed below.

Paragraph (2) of 10 CFR Part 431, Subpart B, Appendix B refers to ''NEMA MG1–1993 with Revisions 1 through 4, paragraph 12.58.1.'' While NEMA MG1–1993 and MG1–2006 both contain a paragraph 12.58.1, the content of these paragraphs differ slightly. The 2006 version extends the covered motor

[6] Design B motors account for most of the induction motors sold and are used in a wide variety of applications including industrial processes and commercial equipment. These polyphase motors are often referred to as general purpose motors, and have 5 percent or less of slip. (The term ''slip'' refers to the difference in the speed of the rotor relative to that of the synchronous speed. In actual operation, rotor speed always lags the magnetic field's speed, allowing the rotor bars to cut magnetic lines of force and produce useful torque. This speed difference is called slip speed. Slip also increases with load and is necessary for torque production.)

horsepower ratings that are tested by dynamometer, as described in IEEE Standard 112 (Method B), from an upper limit of 400 hp in 1993 (NEMA MG1–1993 Revision 4) to 500 hp in 2006. Therefore, DOE proposes to incorporate by reference the paragraph from MG1–2006, because the current industry test procedures for motor efficiency are applicable through 500 hp. This change is also consistent with changes introduced by EISA 2007, which provided nominal full load efficiency standards for specific general purpose electric motors rated up to 500 hp (*i.e.*, NEMA Design B general purpose electric motors).

Paragraph 12.58.2 of NEMA Standards Publication MG1–1993 was not incorporated by reference in 10 CFR 431.15, but is included in references to the labeling requirements contained in 10 CFR 431.31(a)(2). Therefore, to avoid any confusion, DOE proposes to incorporate by reference paragraph 12.58.2 into 10 CFR 431.15.

Table 12–8 in NEMA Standards Publication MG1–1993 is incorporated by reference under 10 CFR 431.15(b)(1)(iv). As discussed above in section III.B.2.i, Table 12–8 (1993) is now Table 12–10 (2006), and retains the same efficiency values as Table 12–8. Therefore, DOE proposes to update this reference to Table 12–10 from NEMA MG1–2006.

As discussed above in section III.B.2.f, NEMA Standards Publication MG1–1993, paragraphs 14.02 and 14.03 became paragraphs 14.2 and 14.3 in MG1–2006. In addition to updating the definition of ''general purpose motor'' under 10 CFR 431.12 and its reference to ''usual'' and ''unusual service conditions,'' DOE proposes to update 10 CFR 431.15(b)(v) by deleting paragraphs 14.02 and 14.03 and incorporating by reference the updated citations to paragraphs 14.2 and 14.3.

Section 431.15(b)(2) of 10 CFR 431.15 incorporates by reference IEEE Standard 112–1996 Test Method B. Although IEEE Standard 112–2004 Test Method B is the current standard (see section III.G), the test method is the same in both documents. Consequently, DOE believes the 1996 version is obsolete and proposes to incorporate by reference the 2004 version. Similarly, DOE proposes to update the reference to CSA Standard C390–93, ''Energy Efficiency Test Methods for Three-Phase Induction Motors'' at 10 CFR 431.15(b)(3) to the current ''CSA Standard C390–98 (R2005).''

In addition to the aforementioned updates to the referenced industry standards documents, DOE proposes to delete certain industry standards that were previously incorporated by reference in 10 CFR 431.15, but are no longer used or referenced in DOE's proposed test procedure or energy conservation standard. In particular, DOE proposes to delete those standards that were required elements under 10 CFR 431.12, ''electric motor,'' but were stricken by EISA 2007, including International Electrotechnical Commission Standards 60034–1 (1996), 60050–411 (1996), 60072–1 (1991), and 60034–12 (1991).

In 10 CFR 431.15(c), DOE provides locations where the standards incorporated by reference are available for inspection. The first is the National Archives and Records Administration (NARA) and the second is DOE. DOE proposes to update the citation for the Web site associated with NARA and to modify the DOE docket information to reflect today's proposal.

In 10 CFR 431.15(d), DOE identifies the organizations from which the public may purchase or otherwise obtain standards incorporated by reference in 10 CFR Part 431, subpart B, for electric motors. DOE proposes to update the list of organizations and directions for purchasing the standards. First, NEMA Standards Publication MG1–2006 may be purchased directly through NEMA, the originator of the MG1 standard. Second, DOE updated some of the address details for obtaining IEEE standards. Third, DOE updated the address and telephone number for obtaining CAN/CSA Standard C390–98(R2005). For each vendor, DOE inserted Web site information that provides another way to purchase standards or, in some cases, download standards.

In 10 CFR 431.15(e), DOE identifies standards documents that are not referenced in the test procedures, listed for ''information and guidance'' concerning laboratory accreditation and certification programs. Although they are not used in the test procedures for electric motors, they form the basis for the nationally recognized laboratory accreditation and certification programs that are essential to compliance certification under 10 CFR 431.36(a)(1) and (2). Further, 10 CFR 431.19 and 10 CFR 431.20 provide explicit reference to these documents as part of the underpinning to DOE's recognition of accreditation bodies and certification programs for electric motor efficiency. Because many have been superseded by newer versions, DOE proposes to update those references. The current list of references includes (1) NVLAP Handbook 150, ''Procedures and General Requirements,'' February 2006; (2) NVLAP Handbook 150–10, ''Efficiency of Electric Motors,'' February 2007; (3) ISO/IEC Guide 17025:2005, ''General requirements for the competence of calibration and testing laboratories;'' (4) ISO Guide 27:1983, ''Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk;'' (5) ISO/IEC Guide 28:2004 ''Conformity assessment—Guidance on a third-party certification system for products;'' ISO/IEC Guide 58, ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition;'' and ISO/IEC Guide 65:1996, ''General requirements for bodies operating product certification systems.'' In addition, DOE proposes to add ISO/IEC Guide 60:2004, ''Conformity assessment—Code of good practice,'' that recommends good practices for all elements of conformity assessment, including certification programs.

D. Determination of Efficiency

In 10 CFR 431.17, ''Determination of Efficiency,'' DOE proposes three updates to the introductory paragraph to reflect changes to referenced sections that have moved. The proposed updates will not affect the measure of efficiency determined by manufacturers, but will correct outdated cross references that exist in the introductory paragraph.

First, in 10 CFR 431.17, DOE proposes to correct the reference to EPCA in 10 CFR 431.17 from ''Part C'' to ''Part A–1,'' because this section on ''Certain Industrial Equipment'' was moved by EPACT 2005 (see discussion in section I.A above). Second, DOE proposes to expand the reference to ''42 U.S.C. 6311–6316'' to include section 6317, which includes small motors. Third, DOE proposes to correct the cross reference to section ''431.192,'' where 10 CFR 431.17 reads, ''This section does not apply to enforcement testing conducted pursuant to section 431.192,'' to read ''431.383.'' The prior section 431.192 was moved to section 431.383 but this cross-reference was not updated. (See 70 FR 60416 (October 18, 2005))

E. Laboratory Accreditation and Labeling

1. Accreditation References

In 10 CFR 431.18(a), DOE establishes certain requirements for the accreditation of any laboratory to test motors for compliance with the efficiency standards in 10 CFR Part 431.

In particular, 10 CFR 431.18(b) describes NIST/NVLAP and the requirements for laboratory accreditation that is granted on the basis of conformance to criteria published in 15 CFR 285, *The National Voluntary Laboratory Accreditation Program,* NIST Handbook 150, *Procedures and General Requirements,* and NIST Handbook 150–10, *Efficiency of Electric Motors.* Where 10 CFR 431.18(b) refers to ''NIST Handbook 150–10, August 1995,'' DOE proposes to update the reference to ''NIST Handbook 150–10, February 2007'' to ensure that the most recent requirements for NIST/NVLAP accreditation are incorporated into 10 CFR Part 431 and laboratories continue to test motors according to the most current industry procedures. This change will eliminate any potential confusion and not impose any undue burden on testing laboratories.

2. Test Method References

DOE proposes to update the test procedures and methodologies referred to in 10 CFR 431.19(b)(4) and (c)(4), and in 10 CFR 431.20(b)(4) and (c)(4) to reflect current industry test procedures that are proposed elsewhere in today's notice. Where DOE refers to ''IEEE Standard 112–1996 Test Method B'' and ''CSA Standard C390–93 Test Method (1),'' DOE proposes to update the references to ''IEEE Standard 112–2004 Test Method B'' and ''CAN/CSA Standard C390–98(R2005) Test Method (1),'' respectively. Likewise, DOE proposes to update the same references in appendix A to subpart B of 10 CFR Part 431. As discussed in section III.G, DOE examined the IEEE and CSA test procedures and concluded that the proposed updates are consistent with the previous methodologies and will not otherwise affect the measurement of efficiency.

3. Labeling

The labeling requirements for electric motors in 10 CFR 431.31(a)(2) refer to the term ''nominal full load efficiency'' and the terms specified in paragraph 12.58.2 of NEMA MG1–1993. DOE proposes to update this reference to the current document, NEMA MG1–2006. DOE examined and compared the language and requirements of paragraph 12.58.2 in NEMA MG1–1993 (Revision 4) with NEMA MG1–2006 (Revision 1) and concluded that they are essentially equivalent, *i.e.*, there were no modifications to the text which affect the electric motors covered in this rulemaking.[7] Therefore, DOE proposes to update to the referenced industry standard. DOE believes that this change maintains consistency in labeling motors for efficiency, will eliminate confusion over labeling requirements in 10 CFR 431.31(a)(2), and not be unduly burdensome to manufacturers or private labelers.

F. Policy Statement on Covered Electric Motors

Appendix A to subpart B of 10 CFR Part 431 contains a ''Policy Statement for Electric Motors Covered Under the Energy Policy and Conservation Act,'' (Policy Statement) which clarifies the scope of electric motors covered under EPCA. The Policy Statement provides interpretation and guidance as to which types of motors are covered under EPCA, explains how DOE would apply the EPCA definitions that relate to motors, and how DOE would apply energy conservation standards to electric motors that are components in certain equipment.

For the reasons expressed below, DOE proposes to delete the contents of appendix A to subpart B, and replace the existing policy statement with the term ''[Reserved].'' DOE proposes this revision to accommodate the changes to section 340(13)(A) of EPCA, as amended by EISA 2007, and to maintain the outline structure of this subpart should DOE decide in the future to clarify by rule the scope of covered electric motors.

The amendments in section 313 of EISA 2007 affected the interpretative guidance provided by 10 CFR Part 431, subpart B, appendix A in two ways by (1) covering certain motors that were not previously covered and (2) striking the definition of ''electric motor.'' EISA 2007 extended the upper limit for electric motors from 200 hp to 500 hp and broadened the scope to potentially cover a variety of motors that were not previously covered. Consequently, any policy statement, clarification, or interpretive guidance about what constitutes an ''electric motor,'' as defined under new section 340(13) of EPCA, as amended by EISA 2007, will require careful examination of other provisions in EISA 2007, related provisions in EPCA, and potential references to NEMA Standards Publication MG1–2006 with Revision 1 (2007). DOE understands that 10 CFR Part 431, subpart B, appendix A was written to eliminate confusion and provide manufacturers some guidance as to what motors were considered ''electric motors'' and therefore subject to energy efficiency regulations. EISA 2007 made changes by deleting the definition of ''electric motor'' and replacing it with the definitions of ''general purpose electric motor (subtype I),'' ''general purpose electric motor (subtype II)'' and setting forth efficiency standards for ''fire pump motors'' and ''NEMA Design B, general purpose electric motors.''

Second, as discussed above, section 313(a)(2) of EISA 2007 deleted the definition of the term ''electric motor'' from section 340(13)(A) of EPCA (42 U.S.C. 6311(13)(A)), removing much of the basis for the interpretive guidance in appendix A to subpart B. Therefore, DOE no longer believes that retaining appendix A to subpart B of 10 CFR Part 431 is warranted, and deleting appendix A is necessary to avoid confusion. Furthermore, as discussed earlier, DOE plans to delete the term ''electric motor'' and its definition in 10 CFR 431.12 as part of a technical amendment final rule that will codify the EISA 2007 standards and directives, including those for electric motors.

G. Updates to the Electric Motor Test Method for Measuring Efficiency

Section 343(a)(5)(A) of EPCA requires that the test procedures for electric motors shall be the test procedures specified in NEMA MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on the date of the enactment of the EPACT 1992 amendments (42 U.S.C. 6314(a)(5)(A)). Section 343(a)(5)(B) of EPCA (42 U.S.C. 6314(a)(5)(B)) states that if the test procedures in NEMA MG1 and IEEE Standard 112 are amended, the Secretary of Energy is required to revise the regulatory test procedures for electric motors to conform to such amendments, unless the Secretary determines by rule, supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in sections 343(a)(2) and (3) of EPCA.

NEMA MG1 was most recently revised and published as NEMA MG1–2006 Revision 1 and IEEE Standard 112–1996 was revised and is now IEEE Standard 112–2004. Similarly CSA Standard C390–93 was revised and is now CAN/CSA Standard C390–98 (R2005). DOE believes the revised test procedures are consistent with the intent of EPCA section 343(a)(2) in that they are designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle, and are not unduly burdensome

[7] DOE notes that the only difference between paragraph 12.58.2 in the 1993 and 2006 editions of NEMA MG1 is the absence of Design E motors in the 2006 edition. Because EPCA does not cover NEMA Design E motors, this change has no impact on manufacturers of covered motors or this rulemaking.

to conduct. Moreover, each one is an update of the test procedures already incorporated into 10 CFR 431.17 and is consistent with current industry practice. Therefore, in today's notice, DOE proposes to prescribe test procedures based on NEMA MG1–2006 with Revision 1, IEEE Standard 112–2004 Test Method B, and CAN/CSA Standard C390–98 (R2005) Test Method (1).

DOE proposes to update the test procedures for electric motors which are incorporated by reference in 10 CFR Part 431, subpart B, appendix B, namely, NEMA MG1–1993, IEEE Standard 112–1996, with the exceptions listed in appendix B to subpart B, section 2.(2)(i) through (ix) but including the correction to the calculation at item (28) in section 10.2 Form B–Test Method B issued by IEEE on January 20, 1998, and CSA Standard C390–93 Test Method (1). All three standards documents have been updated and DOE proposes to update the incorporations by reference in appendix B to subpart B to be consistent and eliminate confusion over which test procedures to use for compliance with the EPCA efficiency standards. DOE has concluded that the proposed revisions will not change or bias the energy efficiency value of an electric motor, whether measured according to the old or current procedures. For the reasons previously noted, these proposed revisions would not increase the burden on manufacturers.

1. References to National Electrical Manufacturers Association Standard MG1

DOE proposes to update the opening statement in 10 CFR Part 431, subpart B, appendix B, section 2, to incorporate by reference ''paragraph 12.58.1'' of NEMA MG1–2006, which now extends the upper horsepower limit of covered motors from 400 to 500 hp. DOE believes that extending the horsepower range to 500 hp is appropriate because it is consistent with industry practice, the IEEE and CSA test procedures referenced in today's NOPR apply to motors with up to 500 hp, and NEMA Design B general purpose electric motors with ratings of up to 500 hp are now covered under EPCA through EISA 2007 section 313(b)(1)(B).

DOE compared the 1993 and 2006 versions of NEMA MG1 and concluded that the procedures and requirements under MG1–12.58.1 are the same in both documents. Therefore, DOE believes that the proposed update to the opening statement in section 2 of appendix B, will not impact the measurement of efficiency of an electric motor. Further, DOE believes that because this update is consistent with current industry practice, it will not be unduly burdensome or otherwise have any adverse impact on manufacturers.

2. References to CAN/Canadian Standards Association Standard C390

DOE proposes to update the reference to CSA Standard C390–93 Test Method (1) in 10 CFR Part 431, subpart B, appendix B, section 2, to the current version—CAN/CSA Standard C390–98 (R2005).

DOE performed a paragraph-by-paragraph, side-by-side examination of the methodologies and measurements used both in the CSA Standard C390 Test Method (1) 1993 and CAN/CSA Standard C390–98 (R2005) Test Method (1). DOE concluded that there were no substantive changes that would affect the measurements, accuracy, or determination of energy efficiency. Instead, DOE found only minor editorial rephrasing of sentences or slight changes in wording for clarification. DOE did not find any revisions to the procedural steps, test methodologies, accuracy requirements, or equations used in determining the energy efficiency of a motor. Upon completing its examination, DOE concluded that Test Method (1) in CAN/CSA Standard C390–98 (R2005), ''Energy Efficiency Test Methods for Three-Phase Induction Motors,'' prescribes the same test as CSA Standard C390–93, and use of either would result in the same measured efficiency. Therefore, DOE proposes to update 10 CFR Part 431, subpart B, appendix B, section 2, and incorporate by reference CAN/CSA Standard C390–98 (R2005) Test Method (1). DOE believes that this update will eliminate any confusion over which test procedure to use when testing electric motors for energy efficiency, and that it will not otherwise be unduly burdensome to manufacturers. Instead, this update is consistent with current industry practice. Nevertheless, DOE invites interested parties to comment on any potential impact that may result from this proposed update.

3. References to Institute of Electrical and Electronics Engineers Standard 112

DOE proposes to update the reference to IEEE Standard 112–1996 in 10 CFR Part 431, subpart B, appendix B, section 2, to the current version of IEEE–112, issued in 2004. As with CAN/CSA Standard C390–98 (R2005) Test Method (1) above, DOE conducted a paragraph-by-paragraph, side-by-side examination of IEEE Standard 112–1996 and the procedural corrections set forth in section 2, paragraph (2) and IEEE Standard 112–2004. DOE found that some of the procedural corrections to the 1996 edition contained in paragraph (2) had already been incorporated into the 2004 edition, while other provisions or requirements prescribed in paragraph (2) had not. Notwithstanding, DOE proposes to retain some of the procedural corrections that are currently set forth in 10 CFR Part 431, subpart B, appendix B, section 2, in the manner addressed below.

First, section 2, paragraph (2)(i) addresses the manner in which to determine the specified temperature used in making resistance corrections and references section 5.1.1 of IEEE Standard 112–1996. Section 5.1.1 of IEEE Standard 112–1996 reads, in part, ''The specified temperature shall be determined by one of the following, which are listed in order of preference.'' Section 2 paragraph (2)(i) of appendix B revised the referenced IEEE sentence to read, ''The specified temperature used in making resistance corrections should be determined by one of the following (Test Method B only allows the use of (a) or (b)), which are listed in order of preference.'' When comparing IEEE Standard 112–1996 with IEEE Standard 112–2004, DOE found that the sentence had been moved to subclause 3.3.2 of IEEE Standard 112–2004 and is now identical to section 2 paragraph (2)(i) of appendix B. Therefore, DOE proposes to revise paragraph 2(i) to refer to subclause 3.3.2 of IEEE Standard 112–2004.

Second, section 2 paragraphs (2)(ii), (iii), and (iv) concern no-load testing, termination of testing, and a modification to ''Form B–Method B,'' respectively. During its examination of IEEE Standard 112–2004, DOE found that all three paragraphs in paragraphs (2)(ii)–(iv) had been incorporated into IEEE Standard 112–2004. Consequently, the three provisions are no longer required as an explicit part of appendix B but can be incorporated by reference to the applicable provisions of IEEE Standard 112–2004. Accordingly, DOE proposes to delete them from appendix B and instead to reference them as part of current IEEE Standard 112–2004 for the following reasons:

(1) Section 2, paragraph (2)(ii), which concerns no-load testing, is no longer required as an explicit correction to IEEE Standard 112–1996, because IEEE Standard 112–2004 now sets forth the same requirements for no-load testing in section 6.4.1.4 with cross references to sections 5.5 and 5.5.1.[8] While some of

[8] The correction in the IEEE Standard 112–1996 applied to subclause 6.4.1.3 on page 17 of the

Continued

the referenced section numbers have changed, the requirements remain the same. Therefore, DOE proposes to delete this correction and incorporate by reference the applicable provision in IEEE Standard 112–2004.

(2) Section 2, paragraph (2)(iii), which concerns termination of the temperature test, is no longer required because of modifications to IEEE Standard 112–1996, which are now part of IEEE Standard 112–2004. In particular, section 5.8.4.4 of IEEE Standard 112–2004, reads: ''For continuous rated machines, the temperature test shall continue until there is a 1 °C or less change in temperature rise above the ambient temperature over a 30-minute period.'' DOE proposes to delete the correction and instead, incorporate by reference the applicable provisions in IEEE Standard 112–2004.

(3) Section 2, paragraph (2)(iv), which concerns recording the ''temperature for resistance correction'' at the top of section 10.2 ''Form B–Method B'' in IEEE Standard 112–1996, is no longer required as an explicit correction in 10 CFR Part 431. Whereas, section 2 paragraph (2)(iv) of appendix B reads, in part, ''Temperature for Resistance Correction (t_s) = ____ °C (See 6.4.3.2),'' an industry modification updated the requirement and incorporated it into section 9.4 ''Form B–Method B'' of IEEE Standard 112–2004, which now reads, ''Total Stator Temperature, t_s,____ (7) ____ °C in a 25 °C Ambient.'' In view of the update, DOE proposes to incorporate by reference the applicable provisions in IEEE Standard 112–2004 into appendix B.

Third, section 2, paragraph (2)(v) concerns the values for t_s and t_t at the bottom of ''Form B–Method B'' in IEEE Standard 112–1996 and updating the ''1996'' cross-reference from ''subclause 8.3'' to read ''subclause 4.4.1'' in IEEE Standard 112–2004. Although the methods of determining temperatures (thermometer, embedded detector, winding resistance, and local temperature detector) in the 2004 ''subclause 4.4.1'' are presented in a different order from that in the 1996 ''subclause 8.3,'' both incorporate the same four methods and relevant cross references. Further, where section 2, paragraph (2)(v) refers to ''the bottom of 10.2 Form B,'' such reference should instead refer to ''9.4 Form B–Method B'' in IEEE Standard 112–2004. Therefore, DOE proposes to incorporate by reference the above provisions in IEEE Standard 112–2004 into appendix B.

Fourth, section 2 paragraph (2)(vi) concerns a footnote in ''Form B–Method B'' of IEEE Standard 112–1996 and the value for ''temperature for resistance correction (t_s).'' Section 2, paragraph (2)(vi) provides explicit guidance about temperature resistance correction in IEEE Standard 112–1996 and the same provision has been incorporated into IEEE Standard 112–2004. Therefore, DOE proposes to delete the correction in section 2 paragraph, (2)(vi) and incorporate by reference the applicable provision in IEEE Standard 112–2004.

Fifth, similar to the correction discussed above, section 2, paragraph (2)(vii) concerns the torque constant ''k'' that is defined both in Newton meters and pound-feet in item (22) of ''Form B–Method B'' of IEEE Standard 112–1996. This constant was corrected to read ''k_2'' in section 2, paragraph (2)(vii) and subsequently became incorporated into section 5.6.1 of IEEE Standard 112–2004. In view of the updated definition(s) for torque constant in IEEE Standard 112–2004, DOE proposes to delete this correction from section 2 paragraph(2)(vii).

Sixth, section 2, paragraph (2)(viii) concerns updating cross-references. Where section 2, paragraph (2)(viii) reads, ''Page 48, at the end of item (27), the following additional reference applies: 'See 6.4.3.2.','' the updated reference is ''Page 62,'' the item number is ''(19),'' and the form is ''9.5 Form B2–Method B Calculations'' in IEEE Standard 112–2004. DOE proposes to incorporate by reference the above updates into appendix B.

Seventh, section 2, paragraph (2)(ix) concerns the value of corrected slip in revolutions per minute on page 48, item (29) of ''Form B–Method B,'' and the applicable cross reference to temperature correction in section 6.4.3.3 of IEEE Standard 112–1996. DOE proposes to delete the correction at section 2, paragraph (2)(ix) because the same correction, including the cross-referenced correction, have been incorporated into item (36) of ''9.5 Form B2–Method B'' of IEEE Standard 112–2004.

In sum, after examination and comparison of IEEE Standard 112–1996 and IEEE Standard 112–2004, DOE concluded that the majority of the corrections were incorporated or addressed in the updated IEEE Standard 112–2004. These changes make several corrections that are currently in paragraph (2) unnecessary and DOE is proposing to remove them. Those corrections that DOE is proposing to retain will have their references updated. In this way, DOE intends to retain the same accuracy, test methodology, and clarification as intended under appendix B to subpart B of 10 CFR Part 431. Moreover, DOE believes that, in all the above updates from IEEE Standard 112–1996 to IEEE Standard 112–2004, there will be no change in the measured energy efficiency of an electric motor. DOE believes that the updates are consistent with current industry practice, will eliminate confusion, and will not be unduly burdensome to manufacturers.

IV. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or compact disc in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) text file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. This person should also provide a daytime telephone number where he or she can be reached. DOE requests that those persons who are scheduled to speak submit a copy of their statements at least two weeks prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate if that person has made alternative arrangements with the Building

standard, and required the cross-referencing of sections 5.3 and 5.3.3 in the standard for the approach testing technicians should follow when separating core loss from friction and windage loss. The updated section numbers in IEEE standard 112–2004 are 6.4.1.4, 5.5, and 5.5.1, respectively.

Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal conference style. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). There shall be no discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. antitrust laws.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will provide an opportunity for interested parties to present summaries of any comments they submitted to DOE before the public meeting, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of particular topics. Participants may comment on any general statements. After the completion of all prepared statements, participants may clarify their statements and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this notice, the proceeding of the public meeting, or any aspect of the rulemaking no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known or available from public sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) a date after which such information might no longer be considered confidential, and (7) why disclosure of the information would be contrary to the public interest.

After the public meeting and the expiration of the period for submission of written statements, DOE will begin conducting the analyses as discussed at the public meeting and reviewing the comments received.

E. Issues on Which the Department of Energy Seeks Comment

Comments are welcome on all aspects of this rulemaking. However, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Test Procedure for Small Electric Motors

DOE invites comment on its proposed test procedure for small electric motors, which is based on IEEE Standard 114–2001 and IEEE Standard 112–2004. See section III.A for details.

2. Alternative Test Procedure for Small Electric Motors

DOE invites comment on its proposal whether to allow a manufacturer to use the CAN/CSA Standard C747–94 as an alternative to the IEEE Standards 112 and 114. DOE may reserve the option of promulgating CAN/CSA Standard C747–94 in the final rule of this test procedure, based on stakeholder comment. See section III.A for details.

3. Alternative Efficiency Determination Method for Small Electric Motors

DOE invites comment on the proposed use of an AEDM for small electric motors, including the requirements for a manufacturer to substantiate its AEDM, the number of basic models and units to be tested, and the accuracy of the predictive capabilities of the AEDM relative to actual testing. See section III.A.3 for details.

4. Definition of ''Electric Motor''

DOE invites comments on its proposed definition of ''electric motor,'' which brings together the four types of electric motors now covered under EPCA: ''general purpose electric motors (subtype I);'' ''fire pump motors;'' ''general purpose electric motors (subtype II);'' and ''NEMA Design B, general purpose electric motors.'' DOE's proposed definition is intended to clarify that all four types of electric motor are covered and could be subject to the updated test procedure proposed in today's notice. See section III.B.2 for details.

5. Definition of ''Fire Pump Motor''

DOE invites comment on its proposed definition of a fire pump motor, which is based on the UL–1004A scope of applicability statement, with a few modifications. One of these changes is to define a fire pump motor as having an upper limit of 200 hp. See section III.B.2 for details.

6. Definition of ''NEMA Design B, General Purpose Electric Motor''

DOE invites comment on its proposed definition of ''NEMA Design B, general purpose electric motor,'' which makes minor modifications to the NEMA Standards Publication MG1–2006 definition—namely, eliminating the 50 Hertz provision and not specifying the percentage slip at rated load for motors with 10 or more poles. See section III.B.2 for details.

7. Updates to Electric Motor Test Procedure

DOE invites comment on its proposed updates to the industry citations contained in the proposed test procedure for electric motors (*i.e.*, updating the procedure to NEMA Standard MG1–2006, IEEE Standard 112–2004, and CAN/CSA Standard C390–98(R2005). See sections III.C through III.G for details.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, OMB did not review this document.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will have no significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at: *http://www.gc.doe.gov.*

EPCA, as amended by the Energy Policy Act of 1992 (EPACT 1992), establishes energy conservation standards and test procedures for commercial and industrial electric motors. (42 U.S.C. 6291–6317). Whereas EPCA section 343(a)(5)(A), 42 U.S.C. 6314(a)(5)(A), requires that testing procedures for motor efficiency shall be the test procedures in NEMA Standards Publication MG1 and the IEEE Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992, DOE prescribed such test procedures at 64 FR 54114 (October 5, 1999). In today's NOPR, DOE proposes to update the test procedures to be consistent with the most current industry test procedures. In addition, EPCA, as amended by EISA 2007, expanded the scope of covered electric motors by prescribing energy conservation standards for ''general purpose electric motors (subtype I);'' ''fire pump motors;'' ''general purpose electric motors (subtype II);'' and ''NEMA Design B, general purpose electric motors'' with a power rating of more than 200 hp, but not greater than 500 hp. In today's NOPR, DOE is proposing that its test procedures in appendix B to subpart B of Part 431 be applicable to all four of these types of electric motors.

In addition, EPCA, as amended, directs the Secretary of Energy to prescribe testing requirements and energy conservation standards for those small electric motors for which the Secretary determines that standards ''would be technologically feasible and economically justified, and would result in significant energy savings.'' (42 U.S.C. 6317(b)(1)). The Secretary issued a positive determination for certain small electric motors on July 10, 2006. 71 FR 38799. In today's NOPR, DOE proposes a test procedure that a manufacturer would use to test and rate the energy efficiency of its small electric motors.

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The proposed rule contains two parts that warrant discussion: Updates to the existing electric motor test procedures in 10 CFR Part 431, subpart B, appendix B and the proposed new test procedures for small electric motors.

DOE examined whether the existing compliance costs already borne by manufacturers based on the proposed revisions to 10 CFR Part 431, subpart B, appendix B for electric motors would change in any way due to today's NOPR. DOE is not imposing any additional testing requirements or higher accuracy tolerances beyond what is already contained in the updated industry standards documents incorporated by reference (*i.e.*, IEEE Standard 112–2004 Test Method B, and CAN/CSA Standard C390–98(R2005) Test Method (1)). Similarly, for small electric motors, DOE is not imposing any additional testing requirements or higher accuracy tolerances beyond what is already contained in the industry standards documents incorporated by reference for this equipment (*i.e.*, IEEE Standard 114–2001, IEEE Standard 112–2004, and CSA Standard C747–94). Because the Department is proposing to adopt those requirements that the industry already follows, DOE does not find that the revisions proposed in this document would result in any significant increase in testing or compliance costs, or otherwise be unduly burdensome.

Moreover, as DOE developed the proposed revisions to the current test procedures, it sought to make them consistent with current industry test procedures and methodologies, and thereby eliminate confusion and any undue burden from determining the efficiency of an electric motor according to two separate test procedures for potentially the same result. DOE addresses this matter in today's NOPR. After taking these circumstances into account, DOE believes that this rulemaking would not impose a significant impact on a substantial number of small businesses that manufacture electric motors. Accordingly, DOE has not prepared a regulatory flexibility analysis for the proposed revisions to 10 CFR Part 431, subpart B, appendix B in today's proposed rule.

In view of these circumstances, a Regulatory Flexibility Act analysis is not required for the test procedure being proposed today. The Department's certification and supporting statement for the factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to the requirements of 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In today's NOPR, DOE proposes test procedures and associated documentation retention and reporting requirements for small electric motors. Unless DOE requires manufacturers of small electric motors to comply with energy conservation standards, however, a manufacturer would not be required to comply with

these record-keeping provisions because of the absence of certification/compliance requirements applicable to the proposed test procedures. Therefore, for small electric motors, today's notice of proposed rulemaking would not impose any new reporting requirements requiring approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

DOE is not proposing any additional reporting and/or record-keeping requirements for 1–200 hp electric motors beyond those that are already in place in 10 CFR 431.17(a)(4)(ii), 431.36, 431.382(a)(3), and 431.385(a)(4). Therefore, today's NOPR would not impose any new or additional reporting requirements requiring clearance under the Paperwork Reduction Act for this group of motors.

EISA 2007 amended EPCA to establish energy conservation standards for 201–500 hp electric motors and other newly covered motors. When these standards take effect on December 19, 2010, manufacturers will be required to comply with the record-keeping provisions in today's proposed rule. As a result, this notice contains certain record-keeping requirements that must be approved by OMB, pursuant to the Paperwork Reduction Act, before manufacturers can be required to comply with them. In particular, section 431.17 would require a manufacturer of a covered motor to keep and maintain records about its alternative efficiency determination methods and make them available to DOE for inspection. Pursuant to the Paperwork Reduction Act, DOE will issue a subsequent public notice seeking comments on the record-keeping requirements in today's proposed rule. Thereafter, and in view of any comments received, DOE will submit the proposed collection of information to OMB for approval, pursuant to 44 U.S.C. 3507.

D. Review Under the National Environmental Policy Act

In this notice, DOE proposes new and amended test procedures that are used to measure and determine the energy efficiency of certain types of electric motors. This proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969, (NEPA) 42 U.S.C. 4321 *et seq.,* and DOE's implementing regulations at 10 CFR Part 1021. In particular, today's proposed rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in DOE's NEPA regulations in appendix A to subpart D of 10 CFR Part 1021. Today's proposed rule will not affect the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires, among other things, that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rulemaking meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 et seq.) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, or tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate that may result in costs to State, local, or tribal governments or the private sector of $100 million or more in any one year (adjusted annually for inflation). (2 U.S.C. 1532(a) and (b)) Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input by elected officers of State, local, and Tribal governments. (2 U.S.C. 1534) On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's proposed rule would establish new and amended test procedures that would be used in measuring the energy efficiency of electric motors. The proposed rule would not result in the expenditure of $100 million or more in any year. Accordingly, no assessment or analysis is required under the UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule to amend DOE test procedures would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554, codified at 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency under general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated a final rule or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Because this rulemaking is not expected to be a significant regulatory action under E.O. 12866; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated a significant energy action by the Administrator of OIRA, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). 15 U.S.C. 788. Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The rule proposed in this notice incorporates testing methods contained in the following commercial standards: (1) IEEE Standard 112–2004, (2) IEEE Standard 114–2001, (3) CAN/CSA Standard C390–98(R2005), and (4) CAN/CSA Standard C747–94. DOE has evaluated these revised standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact of these test procedures on competition.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 11, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend 10 CFR part 431 as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.2 of subpart A is amended by revising the definitions of ''Act'', ''Covered equipment'' and ''EPCA'' to read as follows:

§ 431.2 Definitions.

* * * * *

Act means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291–6317.

* * * * *

Covered equipment means any electric motor, as defined in § 431.12; commercial heating, ventilating, and air conditioning, and water heating product (HVAC & WH product), as defined in § 431.172; commercial refrigerator, freezer, or refrigerator-freezer, as defined in § 431.62; automatic commercial ice maker, as defined in § 431.132; commercial clothes washer, as defined in § 431.152; distribution transformer, as defined in § 431.192; illuminated exit sign, as defined in § 431.202; traffic signal module or pedestrian module, as defined in § 431.222; unit heater, as defined in § 431.242; commercial prerinse spray valve, as defined in § 431.262; mercury vapor lamp ballast, as defined in § 431.282; refrigerated bottled or canned beverage vending machine, as defined in § 431.292; metal halide ballast, as defined in § 431.322; or small electric motor, as defined in § 431.342.

* * * * *

EPCA means the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291–6317.

* * * * *

3. Section 431.12 of subpart B is amended by:

a. Revising the introductory text;

b. Revising the definitions of ''Accreditation,'' ''Basic model,''

''General purpose motor,'' ''General purpose electric motor (subtype I),'' and ''Nominal full load efficiency''; and

c. Adding in alphabetical order, new definitions for ''Electric motor'', ''Fire pump motor'' and ''NEMA Design B, general purpose electric motor''.

The revisions and additions read as follows:

§ 431.12 Definitions.

The following definitions apply for purposes of this subpart, and of subparts U through W of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in section 340 of the Act.

Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in Test Method B of Institute of Electrical and Electronics Engineers (IEEE) Standard 112–2004, *Test Procedure for Polyphase Induction Motors and Generators,* and Test Method (1) of Canadian Standards Association (CAN/CSA) Standard C390–98(R2005), *Energy Efficiency Test Methods for Three-Phase Induction Motors.* (Incorporated by reference, see § 431.15)

* * * * *

Basic model means, with respect to an electric motor, all units of a given type of electric motor (or class thereof) manufactured by a single manufacturer, and which have the same rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For the purpose of this definition, ''rating'' means a combination of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.25 prescribes nominal full load efficiency standards.

* * * * *

Electric motor means any of the following four types of motors: A general purpose electric motor (subtype I), a fire pump motor, a general purpose electric motor (subtype II), or a NEMA Design B general purpose electric motor.

* * * * *

Fire pump motor means a Design B polyphase motor, as defined in NEMA MG1–2006, rated 500 horsepower (373 kW) or less, 600 volts or less, and that is intended for use in accordance with the National Fire Protection Association (NFPA) Standard 20–2007, ''Standard for the Installation of Stationary Pumps for Fire Protection.''

General purpose motor means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–2006, paragraph 14.2, ''Usual Service Conditions,'' (incorporated by reference, see § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–2006, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, see § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

General purpose electric motor (subtype I) means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified NEMA Standards Publication MG1–2006 Rev. 1, paragraph 14.2, ''Usual Service Conditions,'' (incorporated by reference, see § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–2006 Rev. 1, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, see § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

* * * * *

NEMA Design B, general purpose electric motor means a squirrel-cage motor designed to withstand full-voltage starting, developing locked-rotor, breakdown, and pull-up torques adequate for general application as specified in sections 12.38, 12.39 and 12.40, respectively, of NEMA Standards Publication MG1–2006, drawing locked-rotor current not to exceed the values shown in MG1–12.35.1 for 60 hertz motors, and having a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

Nominal full load efficiency means, with respect to an electric motor, a representative value of efficiency selected from the ''Nominal Efficiency'' column of Table 12–10, NEMA Standards Publication MG1–2006 Rev. 1, (Incorporated by reference, see § 431.15), that is not greater than the average full load efficiency of a population of motors of the same design.

* * * * *

4. Section 431.15 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 431.15 Materials incorporated by reference.

* * * * *

(b) *List of standards incorporated by reference.* (1) The following provisions of National Electrical Manufacturers Association Standards Publication MG1–2006, *Motors and Generators,* with Revision 1, IBR approved for §§ 431.12; 431.31 and appendix B to subpart B of part 431:

(i) Section II, *Small (Fractional) and Medium (Integral) Machines, Part 12, Tests and Performance—AC and DC Motors,* paragraphs 12.58.1 and 12.58.2, and Table 12–10, IBR approved for § 431.12; and

(ii) Section II, *Small (Fractional) and Medium (Integral) Machines, Part 14, Application Data—AC and DC Small and Medium Machines,* paragraphs 14.2 and 14.3, IBR approved for § 431.12.

(2) Institute of Electrical and Electronics Engineers, Inc., Standard 112–2004, *IEEE Standard Test Procedure for Polyphase Induction Motors and Generators, Test Method B, Input-Output with Loss Segregation,* IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of part 431.

(3) Canadian Standards Association (CAN/CSA) Standard C390–98(R2005), *Energy Efficiency Test Methods for Three-Phase Induction Motors,* Test Method (1), *Input-Output Method With Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding (I^2R), Rotor Winding (I^2R), Core, and Windage-Friction Losses,* IBR approved for §§ 431.12; 431.19; 431.20; appendix B to subpart B of part 431.

(4) International Electrotechnical Commission Standard 60034–1 (2004), *Rotating Electrical Machines,* Part 1: Rating and performance, section 3: Duty, clause 3.2.1 and figure 1, IBR approved.

(c) *Inspection of standards.* The standards incorporated by reference are available for inspection at:

(1) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or visit *http://www.archives.gov/federal-register/cfr/ibr-locations.html*;

(2) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test

Procedures for Electric Motors,'' Docket No. EERE–2008–BT–TP–0008, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

(d) *Availability of standards.* Standards incorporated by reference may be obtained from the following sources:

(1) Copies of NEMA Standards Publication MG1–2006 with Revision 1 can be obtained from the National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1752, Rosslyn, Virginia 22209, 703–841–3200, *http://www.nema.org/stds/.*

(2) Copies of IEEE Standard 112–2004 can be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), *http://www.ieee.org/web/publications/home/index.html.*

(3) Copies of CAN/CSA Standard C390–98(R2005) can be obtained from the Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or online: *http://www.csa-intl.org/onlinestore/welcome.asp.*

(e) *Reference standards*—(1) *General.* The standards listed in this paragraph are referred to in the DOE procedures for testing laboratories, and recognition of accreditation bodies and certification programs but are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of references.* (i) National Voluntary Laboratory Accreditation (NVLAP) Program Handbooks 150, ''Procedures and General Requirements,'' February 2006, and 150–10, ''Efficiency of Electric Motors,'' February 2007. National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899.

(ii) ISO/IEC Guide 17025:2005, ''General requirements for the competence of calibration and testing laboratories.''

(iii) ISO Guide 27:1983, ''Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk.''

(iv) ISO/IEC Guide 28:2004, ''Conformity assessment—Guidance on a third-party certification system for products.''

(v) ISO/IEC Guide 58, ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition.''

(vi) ISO/IEC Guide 60:2004, ''Conformity assessment—Code of good practice.''

(vii) ISO/IEC Guide 65:1996, ''General requirements for bodies operating product certification systems.''

The above international standards are available online from a variety of sources and may be obtained through the International Standards Organization at *http://www.iso.org*, the International Electrotechnical Commission at *http://webstore.iec.ch/*, the American National Standards Institute at *http://www.webstore.ansi.org/*, or Global Engineering Documents *http://www.global.ihs.com/*, as well as others.

5. In § 431.17, the introductory text is revised to read as follows:

§ 431.17 Determination of efficiency.

When a party determines the energy efficiency of an electric motor in order to comply with an obligation imposed on it by or pursuant to Part A–1 of Title III of EPCA, 42 U.S.C. 6311–6317, this section applies. This section does not apply to enforcement testing conducted pursuant to § 431.383.

* * * * *

6. In § 431.18, paragraph (b) is revised to read as follows:

§ 431.18 Testing laboratories.

* * * * *

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR 285. The National Voluntary Laboratory Accreditation Program, *Procedures and General Requirements*, NIST Handbook 150–10, February 2007, presents the technical requirements of the National Voluntary Laboratory Accreditation Program for the *Efficiency of Electric Motors* field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program *Procedures and General Requirements*, which contains 15 CFR 285 plus all general NIST/NVLAP procedures, criteria, and policies. Changes in NIST/NVLAP's criteria, procedures, policies, standards or other bases for granting accreditation, occurring subsequent to the initial effective date of 10 CFR part 431, shall not apply to accreditation under this Part unless approved in writing by the Department of Energy. Information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, telephone (301) 975–4016, or fax (301) 926–2884.

7. In § 431.19, paragraphs (b)(4) and (c)(3) and (4) are revised to read as follows:

§ 431.19 Department of Energy recognition of accreditation bodies.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CAN/CSA Standard C390–98(R2005) Test Method (1), (incorporated by reference, see § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors.

(c) * * *

(3) *Qualifications to do accrediting.* Experience in accrediting should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition*, as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 17025:2005, *General requirements for the competence of calibration and testing laboratories,* and ISO/IEC Guide 60:2004, *Conformity assessment—Code of good practice.*

(4) *Expertise in electric motor test procedures.* The petition should set forth the organization's experience with the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CAN/CSA Standard C390–98(R2005) Test Method (1), (incorporated by reference, see § 431.15) and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 17025:2005, *General requirements for the competence of calibration and testing laboratories,* to energy efficiency testing for electric motors.

* * * * *

8. In § 431.20, paragraphs (b)(4) and (c)(3) and (4) are revised to read as follows:

§ 431.20 Department of Energy recognition of nationally recognized certification programs.

* * * * *

(b) * * *

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CAN/CSA Standard C390–98(R2005) Test Method (1), (incorporated by reference, see § 431.15) or similar procedures and methodologies for determining the energy efficiency of electric motors.

It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency.

(c) * * *

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65:1996, *General requirements for bodies operating product certification systems,* ISO/IEC Guide 27:1983, *Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk,* and ISO/IEC Guide 28:2004, *Conformity assessment—Guidance on a third-party certification system for products,* as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 17025:2005, *General requirements for the competence of calibration and testing laboratories*, and ISO/IEC Guide 60:2004, *Conformity assessment—Code of good practice.*

(4) *Expertise in electric motor test procedures.* The petition should set forth the program's experience with the test procedures and methodologies in IEEE Standard 112–2004 Test Method B and CAN/CSA Standard C390–98(R2005) Test Method (1), (incorporated by reference, see § 431.15) and with similar procedures and methodologies. This part of the petition should include description of prior projects, qualifications of staff members, and the like. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 17025:2005, *General requirements for the competence of calibration and testing laboratories.*

* * * * *

9. In § 431.31, paragraph (a)(2) is revised to read as follows:

§ 431.31 Labeling requirements.

(a) * * *

(2) Display of required information. All orientation, spacing, type sizes, type faces, and line widths to display this required information shall be the same as or similar to the display of the other performance data on the motor's permanent nameplate. The nominal full load efficiency shall be identified either by the term ''Nominal Efficiency'' or ''Nom. Eff.'' or by the terms specified in paragraph 12.58.2 of NEMA MG1–2006 Rev. 1, (incorporated by reference, see § 431.15) as for example ''NEMA Nom. Eff. ____.'' The DOE number shall be in the form ''CC____.''

* * * * *

Appendix A [Removed and Reserved]

10. Appendix A to subpart B of part 431 is removed and reserved.

11. Revise sections 2 and 3 to appendix B to subpart B of 10 CFR part 431 to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring Nominal Full Load Efficiency of Electric Motors

* * * * *

2. Test Procedures

Efficiency and losses shall be determined in accordance with NEMA MG1–2006 with Revision 1, paragraph 12.58.1, *Determination of Motor Efficiency and Losses,* (incorporated by reference, see § 431.15), and either:

(1) CAN/CSA Standard C390–98(R2005), *Energy Efficiency Test Methods for Three-Phase Induction Motors,* Test Method (1), *Input-Output Method With Indirect Measurement of the Stray-Load Loss and Direct Measurement of the Stator Winding (I^2R), Rotor Winding (I^2R), Core, and Windage-Friction Losses,* (Incorporated by reference, see § 431.15), or

(2) Institute of Electrical and Electronics Engineers, Inc., Standard 112–2004, *IEEE Standard Test Procedure for Polyphase Induction Motors and Generators,* Test Method B, *Input-Output with Loss Segregation*, (incorporated by reference, see § 431.15), except as follows:

(i) Page 4, subclause 3.3.2, *Specified temperature,* the clause that reads ''The specified temperature shall be determined by one of the following, which are listed in order of preference:'' does not apply. Instead, the following shall apply:

The specified temperature used in making resistance corrections should be determined by one of the following (Test Method B only allows the use of (a) or (b)), which are listed in order of preference:

(ii) Page 61, at the bottom of 9.4 Form B-Method B, after the footnote, the following additional sentence applies:

The values for t_s and t_t shall be based on the same method of temperature measurement, selected from the four methods in subclause 4.4.1.

(iii) Page 62, in item (19) of 9.5 Form B2-Method B Calculations, the following additional reference should be appended to the ''Source or Calculation'' cell for that item: ''and 6.4.3.2.''

3. Amendments to Test Procedures

Any revision to IEEE Standard 112–2004 Test Method B, to CAN/CSA Standard C390–98(R2005) Test Method (1), or to NEMA Standards Publication MG1–2006 Revision 1 after the promulgation of this appendix B, shall not be effective for purposes of test procedures required under Part 431 and this appendix B, unless Part 431 and appendix B are amended.

12. Part 431 is amended by adding a new Subpart T to read as follows:

Subpart T—Small Electric Motors

Sec.
431.341 Purpose and scope.
431.342 Definitions concerning small electric motors.

Test Procedures

431.343 Materials incorporated by reference.
431.344 Test procedures for the measurement of energy efficiency.
431.345 Determination of small electric motor energy efficiency.

Energy Conservation Standards

431.346 Energy conservation standards and their effective dates

§ 431.341 Purpose and scope.

This subpart contains definitions, test procedures and energy conservation requirements for small electric motors, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

§ 431.342 Definitions concerning small electric motors.

The following definitions are applicable to this subpart:

Alternative efficiency determination method or AEDM means, with respect to a small electric motor, a method of calculating the total power loss and average full load efficiency.

Average full load efficiency means the arithmetic mean of the full load efficiencies of a population of small electric motors of duplicate design, where the full load efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor's useful power output to its total power input when the motor is operated at its full rated load, rated voltage, and rated frequency.

Basic model means, with respect to a small electric motor, all units of a given type of small electric motor (or class thereof) manufactured by a single manufacturer, and which have the same

rating, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency. For the purpose of this definition, ''rating'' means a combination of the small electric motor's group (*i.e.*, capacitor-start, capacitor-run; capacitor-start, induction-run; or polyphase), horsepower rating (or standard kilowatt equivalent), and number of poles with respect to which § 431.346 prescribes nominal full load efficiency standards.

Small electric motor means a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.

Test Procedures

§ 431.343 Materials incorporated by reference.

(a) General. The Department incorporates by reference the following test procedures into subpart T of part 431. The Director of the **Federal Register** has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the Department test procedures unless and until the Department amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference.* (1) Institute of Electrical and Electronics Engineers, Inc., IEEE Standard 114–2001, *IEEE Standard Test Procedure for Single-Phase Induction Motors.*

(2) Institute of Electrical and Electronics Engineers, Inc., IEEE Standard 112–2004, *IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.*

(3) Canadian Standards Association (CAN/CSA) Standard C747–94, *Energy Efficiency Test Methods for Single- and Three-Phase Small Motors.* (Reaffirmed 2005)

(c) *Availability of reference*—(1) Inspection of test procedures. The test procedures incorporated by reference are available for inspection at the following locations:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or visit *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) Resource Room of the Building Technologies Program, U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of the standard.* Copies of the standards incorporated by reference may be obtained from the following sources:

(i) The Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE (4333), or *http://www.ieee.org/web/publications/home/index.html.*

(ii) The Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or *http://www.csa-intl.org/onlinestore/welcome.asp.*

§ 431.344 Test Procedures for the Measurement of Energy Efficiency.

(a) Scope. This section provides the test procedure for measuring, pursuant to EPCA, the efficiency of small electric motors pursuant to EPCA. For purposes of this part 431 and EPCA, the test procedure for measuring the efficiency of small electric motors shall be the test procedures specified in § 431.343(b).

(b) Testing and Calculations. Determine the energy efficiency and losses by using one of the following test methods:

(1) Canadian Standards Association (CAN/CSA) Standard C747–94, (incorporated by reference, see § 431.343), *Energy Efficiency Test Methods for Single- and Three-Phase Small Motors,* or

(2) Either IEEE Standard 114–2001, (incorporated by reference, see § 431.343), *IEEE Standard Test Procedure for Single-Phase Induction Motors,* or IEEE Standard 112–2004, (incorporated by reference, see § 431.343), *IEEE Standard Test Procedure for Polyphase Induction Motors and Generators.*

§ 431.345 Determination of Small Electric Motor Efficiency.

When a party determines the energy efficiency of a small electric motor in order to comply with an obligation imposed on it by or pursuant to Part A–1 of Title III of EPCA, 42 U.S.C. 6311–6317, this section applies. This section does not apply to enforcement testing conducted pursuant to § 431.381.

(a) *Provisions applicable to all small electric motors*—(1) *General requirements.* The average full load efficiency of each basic model of small electric motor must be determined either by testing in accordance with § 431.344 of this subpart, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of paragraphs (a)(2) and (3) of this section, provided, however, that an AEDM may be used to determine the average full load efficiency of one or more of a manufacturer's basic models only if the average full load efficiency of at least five of its other basic models is determined through testing.

(2) *Alternative efficiency determination method.* An AEDM applied to a basic model must be:

(i) Derived from a mathematical model that represents the mechanical and electrical characteristics of that basic model, and

(ii) Based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data.

(3) *Substantiation of an alternative efficiency determination method.* Before an AEDM is used, its accuracy and reliability must be substantiated as follows:

(i) The AEDM must be applied to at least five basic models that have been tested in accordance with § 431.344; and

(ii) The predicted total power loss for each such basic model, calculated by applying the AEDM, must be within plus or minus 10 percent of the mean total power loss determined from the testing of that basic model.

(4) *Subsequent verification of an AEDM.* (i) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing the method or methods used; the mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based; complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraph (a)(3) of this section; and the calculations used to determine the efficiency and total power losses of each basic model to which the AEDM was applied.

(ii) If requested by the Department, the manufacturer shall conduct simulations to predict the performance of particular basic models of distribution transformers specified by the Department, analyses of previous simulations conducted by the manufacturer, sample testing of basic

models selected by the Department, or a combination of the foregoing.

(b) *Additional testing requirements*—(1) *Selection of basic models for testing if an AEDM is to be applied.* (i) A manufacturer must select basic models for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12 calendar months period beginning in 2005,[1] whichever is later;

(B) The basic models should be of different horsepower ratings without duplication;

(C) The basic models should be of different frame number series without duplication; and

(D) Each basic model should have the lowest nominal full load efficiency among the basic models with the same rating (''rating'' as used here has the same meaning as it has in the definition of ''basic model'').

(ii) If it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(2) Selection of units for testing within a basic model. For each basic model selected for testing,[2] a sample of units shall be selected at random and tested. The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be no fewer than five units, except when fewer than five units of a basic model would be produced over a reasonable period of time (approximately 180 days). In this case, each unit shall be tested.

Energy Conservation Standard

§ 431.346 Small Electric Motor Energy Conservation Standards and Their Effective Dates. [RESERVED]

13. In § 431.385, paragraph (a) introductory text is revised to read as follows:

§ 431.385 Cessation of distribution of a basic model of an electric motor.

(a) In the event that a model of an electric motor is determined non-compliant by the Department in accordance with § 431.383 or if a manufacturer or private labeler determines a model of an electric motor to be in noncompliance, then the manufacturer or private labeler shall:

* * * * *

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BILLING CODE 6450–01–P

[1] In identifying these five basic models, any small electric motor that does not comply with § 431.346 shall be excluded from consideration.

[2] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2008–N–0604]

General and Plastic Surgery Devices: Proposed Classification for the Tissue Expander

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify into class II (special controls) the tissue expander, as a device intended for temporary (less than 6 months) subdermal implantation to stretch the skin for surgical applications, specifically to develop surgical flaps and additional tissue coverage. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance that FDA intends will serve as the special control if FDA classifies this device type into class II.

DATES: Submit written or electronic comments by March 23, 2009. See section IV of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2008–N–0604, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nada Hanafi, Center for Devices and Radiological Health (HFZ–4), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8848.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), and the Food and Drug Modernization Act of 1997 (FDAMA) (Public Law 105–115), the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as ''preamendments devices.'' FDA classifies these devices after the agency has taken the following steps:

(1) Receives a recommendation from a device classification panel (an FDA advisory committee);

(2) Publishes the panel's recommendation for comment, along with a proposed regulation classifying the device type; and

(3) Publishes a final regulation classifying the device type.

FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as ''postamendments devices.'' These device types are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those device types remain in class III and require premarket approval, unless and until:

(1) FDA reclassifies the device type into class I or II;

(2) FDA issues an order classifying the device type into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or

(3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval.

The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A person may market a preamendments device that has been classified into class III through premarket notification procedures, without submission of a premarket approval application (PMA), until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

The tissue expander is a preamendment device type that was not classified in the final rule published in the **Federal Register** of June 24, 1988, classifying other General and Plastic Surgery Devices (53 FR 23856). Consistent with the act and the regulations, FDA consulted with the Panel, an FDA advisory committee, regarding the classification of this device type.

II. Recommendation of the Panel

At a public meeting held on August 25 and 26, 2005, the Panel unanimously recommended that the tissue expander be classified into class II (Ref. 1). The Panel believed that class II, special controls, in addition to general controls, would reasonably assure the safety and effectiveness of this device type. The Panel also recommended that the special control for the device type be a guidance document.

A. Identification

FDA is proposing the following identification based on the Panel's recommendation and the available information: A tissue expander is a device intended for temporary (less than 6 months) subdermal implantation to stretch the skin for surgical applications, specifically to develop surgical flaps and additional tissue coverage. It is made of an inflatable silicone elastomer shell filled with Normal Physiological Saline (injection grade).

B. Recommended Classification of the Panel

The Panel unanimously recommended that the tissue expander be classified into class II. The Panel believed that class II with the special controls (a guidance document and labeling) would provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance that will serve as the special control for this device type.

C. Summary of Reasons for Recommendation

After reviewing the information provided by FDA, and after consideration of the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the device system, the Panel provided the following reasons in support of its recommendation to classify the generic device type, tissue expander intended for temporary (less than 6 months) subdermal implantation to develop surgical flaps and additional coverage for surgical applications, into class II. The Panel believed the tissue expander should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide such assurance.

D. Summary of the Data Upon Which the Recommendation is Based

In addition to the potential risks to health associated with implantation of the tissue expander described in section II.E of this document, ''Risks to Health,'' there is reasonable knowledge of the benefits of the device type. Specifically, the tissue expander develops tissue flaps and coverage needed for surgical applications, such as breast reconstruction following mastectomy, treatment of underdeveloped breasts, scar revision, and treatment of soft tissue deformities or injuries.

E. Risks to Health

After considering the Panel's comments and recommendation, the published literature, and medical device reports, FDA has evaluated the risks to health associated with use of the tissue expander. FDA believes the following are risks to health associated with use of the device type:

Skin trauma, including necrosis, thinning and slough;

Device failure, including rupture and injection site/port failure;

Infection—Infection is a risk to health associated with all surgical procedures and implanted devices. Incompatible or impure material composition may irritate the surrounding tissue which could increase the risk of infection. Use of a device that is not pyrogen free may elicit a fever.

Adverse tissue reaction—Adverse tissue reaction is a risk to health common to all implanted devices. The implantation of the tissue expander will elicit a mild inflammatory reaction typical of a normal foreign body response. Incompatible material or impurities in the materials may increase the severity of a local tissue reaction or cause a systemic tissue reaction.

Pain—Pain is a risk to health associated with all surgical procedures and implanted devices.

F. Special Controls

In addition to general controls, FDA believes that the draft guidance document entitled ''Class II Special Controls Guidance: Tissue Expander'' (the draft class II special controls guidance document) is a special control adequate to address the risks to health associated with the use of the device type described in section II.E of this document. FDA believes that the draft class II special controls guidance document addresses the Panel's concerns and provides reasonable assurance of the safety and effectiveness of the device type. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft class II special controls guidance document that the agency would use as the special control for this device type.

The draft class II special controls guidance document sets forth the information FDA recommends submitters include in premarket notification submissions (510(k)s) for a tissue expander. FDA has identified the risks to health associated with the use

of the device type in the first column of table 1 of this document. The recommended mitigation measures identified in the draft class II special controls guidance document is in the second column of table 1 of this document. FDA believes that addressing these risks to health in a 510(k) in the manner identified in the draft class II special controls guidance document, or in an acceptable alternative manner, is necessary to provide reasonable assurance of the safety and effectiveness of the device type.

TABLE 1.—RISKS TO HEALTH AND MITIGATION MEASURES

Identified Risk	Recommended Mitigation Measures
Skin trauma (e.g., necrosis, thinning, sloughing).	Labeling
Device failure (e.g., rupture, injection site/port failure).	Preclinical testing Labeling
Infection	Sterility
Adverse tissue reaction.	Biocompatibility
Pain	Labeling

III. Proposed Classification

FDA concurs with the Panel's recommendation that a tissue expander should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

IV. Proposed Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of this device type into class II will have a negligible impact on manufacturers because manufacturers of the device type currently must provide premarket notification before marketing the device and because FDA believes that manufacturers are already substantially in compliance with the recommendations in the draft guidance document. Because classification into class II will not increase regulatory costs with respect to this device type, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different or in addition to'' certain federal requirements applicable to devices (21 U.S.C. 360k; *Medtronic* v. *Lohr*, 518 U.S. 470 (1996); *Riegel* v. *Medtronic*, 128 S.Ct. 999 (2008)). In this proposed rulemaking, FDA has tentatively determined that general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish special controls to provide such assurance. FDA therefore proposes to establish special controls to address the issues of safety or effectiveness identified in the special controls draft guidance document. If this proposed rule is made final, these special controls would create ''requirements'' for specific medical devices under 21 U.S.C. 360k, even though product sponsors would have some flexibility in how they meet those requirements (*Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–42 (9th Cir. 1997)).

In addition, if this rule becomes final, as with any Federal requirement, if a State law requirement makes compliance with both Federal law and State law impossible, or would frustrate Federal objectives, the State requirement would be preempted. (See *Geier* v. *American Honda Co.,* 529 U.S. 861 (2000); *English* v. *General Electric Co.,* 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.,* 373 U.S. 132, 142–43 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).)

VIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required. This proposed rule designates a guidance document as a special control.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Tissue Expander,'' which contains an analysis of the paperwork burden for the draft guidance.

IX. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

X. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. General and Plastic Surgery Devices Panel, Transcript, August 25 and 26, 2005, pp. 11 through 58 of the August 26, 2005, transcripts.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 878 as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 3601, 371.

2. Add § 878.3600 to subpart D to read as follows:

§ 878.3600 Tissue expander.

(a) *Identification*. A tissue expander is a device intended for temporary (less than 6 months) subdermal implantation to stretch the skin for surgical applications, specifically to develop surgical flaps and additional tissue coverage. It is made of an inflatable silicone elastomer shell filled with Normal Physiological Saline (injection grade).

(b) *Classification*. Class II (special controls). The special control for this device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Tissue Expander.'' See § 878.1(e) for availability information of guidance documents.

Dated: December 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30439 Filed 12–19–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571, 573

RIN 3141–0001

Amendments to Various National Indian Gaming Commission Regulations

AGENCY: National Indian Gaming Commission (NIGC or Commission).

ACTION: Proposed rules.

SUMMARY: The proposed rule modifies various Commission regulations to reduce reporting burdens on tribes, update costs for background investigations, clarify definitions and regulatory intent, and update audit requirements to consolidate and reflect industry standards.

DATES: Submit comments on or before February 5, 2009.

ADDRESSES: Comments can be faxed, mailed, or e-mailed. Mail comments to ''Comments on Administrative Regulations,'' National Indian Gaming Commission, 1441 L St., NW., Washington, DC 20005, Attn: Rebecca Chapman, Office of General Counsel. Comments may be faxed to 202–632–7066 (not a toll-free number). Comments may be sent electronically to *adminregs@nigc.gov*.

FOR FURTHER INFORMATION CONTACT: Rebecca Chapman, Staff Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA or Act), 25 U.S.C. 2701–21, creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. 25 U.S.C. 2702. The NIGC was granted, among other things, regulatory oversight and enforcement authority, including the authority to monitor tribal compliance with IGRA, NIGC regulations, and tribal gaming ordinances.

The Commission has worked under IGRA for almost twenty years, and in 1992, it adopted regulations. 25 U.S.C. 2706(b)(10). To better carry out its statutory duties, the Commission undertakes this collection of minor, miscellaneous regulation changes. The proposed rule will update regulations, and it will streamline and optimize existing procedures.

II. Development of the Proposed Rules Through Written Tribal Consultation

The Commission identified a need for minor changes to various parts of its regulations, and in accordance with its government-to-government consultation policy (69 FR 16,973 (Mar. 31, 2004)), requested input from Indian tribes. On March 26, 2007, the Commission prepared amendments to the regulations and sent a copy to the leaders of all gaming tribes for comment. Fifty-seven tribes provided written comments. The NIGC carefully reviewed all comments, often incorporating suggested changes.

In addition, the NIGC consulted with tribes and their gaming commissions at regional gaming association meetings around the country and at the Washington, DC, headquarters. Since March 26, 2007, the NIGC has held consultations at fifteen regional gaming conferences and consulted with more than 110 tribes when the proposed rule was on the agenda. Other than the previous 57 submissions, no tribes chose to consult or comment further about these miscellaneous regulation changes.

III. Purpose and Scope

The changes in this proposed rule are minor but provide incremental improvements to existing regulations. These changes clarify existing regulations, reduce tribal reporting burdens for fees, update costs for background investigations, and allow tribes to consolidate audits and/or file shortened versions to reduce costs. The proposed rule is discussed below.

A. Definitions

NIGC regulations define ''key employee'' at 25 CFR 502.14. The jobs listed for key employees are, among other things, subject to a background investigation as a condition of licensure. The proposed rule would reflect the common practice of tribes that identify additional employees as key employees subject to background investigations beyond those positions identified in IGRA. NIGC has received no comments on this change.

IGRA and NIGC regulations define ''net revenue'' as ''gross gaming revenues of an Indian gaming operation

less amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.'' 25 U.S.C. 2703(9); 25 CFR 502.16. The proposed rule would amend 25 CFR 502.16 to read:

Net Revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

The proposed rule would reflect the industry understanding of what constitutes an operating expense in order to clarify what constitutes net revenues for a gaming operation.

The Commission accepted the suggestion of a number of commenters to include the words ''gaming-related'' in order to make clear that the Commission's jurisdiction extended only to gaming revenues. Thus, the proposed rule reflects this suggestion.

The NIGC's regulations define a ''person having a direct or indirect financial interest in a management contract'' to include:

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or * * *

25 CFR 502.17(d). The proposed rule would lower the requisite financial interest to five percent for publicly traded companies so as to be consistent with the Securities and Exchange Commission's understanding of a ''significant shareholder.'' The Commission also notes that this change would be consistent with similar requirements in other gaming jurisdictions.

One comment from a tribe stated that this part of the proposed rule created too onerous a burden on tribes. However, the NIGC disagrees and feels that lowering the requisite interest would best protect the integrity of Indian gaming.

NIGC regulations define ''primary management official'' at 25 CFR 502.19. The jobs listed for primary management officials are, among other things, subject to a background investigation as a condition of licensure. The proposed rule would reflect the common practice of tribes that identify additional employees as primary management officials subject to background investigations beyond those positions identified in IGRA. NIGC has received no comments on this change.

B. Annual Fees Required

IGRA requires the NIGC to set an annual funding rate. 25 U.S.C. 2717. NIGC implements this requirement under 25 CFR part 514, which requires tribal submissions of fees four times per year. The proposed rule would reduce the number of fee submissions by half. The proposed rule would also incorporate suggested changes by some tribal commenters that noted inconsistencies in language over when to set fee rates and when to adjust schedules.

C. Content of Management Contracts

IGRA and NIGC regulations require specific provisions in a management contract, and its accompanying submission package, before the Chairman can approve it. 25 U.S.C. 2711; 25 CFR 531.1, 533.3. The Chairman must also approve any amendment to a management contract. 25 CFR 535.1, 535.3. In applying for approval, all persons having a financial interest in, or management responsibility for, a management contract must be disclosed to the Commission and must undergo a background investigation. 25 CFR 537.1. Management contractors must pay for this investigation. 25 CFR 537.3. If the Chairman disapproves a management contract or amendment, the tribe or contractor may appeal. 25 CFR 539.1, 539.2.

The proposed rule would update 25 CFR 531.1, 533.1, 533.3, and 533.7 by removing language regarding the Secretary of the Interior's approval of management contracts. Because the Secretary no longer fulfills that role, the NIGC is eliminating unnecessary references in §§ 531.1, 533.1, 533.3, and 533.7 to the Secretary's former authority. Further, section 533.5 permits the Chairman to take action on noncompliant management contracts previously approved by the Secretary. Because no management contracts approved by the Secretary remain active, section 533.5 is obsolete and would be removed.

Additionally, the proposed rule would update § 533.3 to reflect the existing practice of providing a legal description for the land upon which the gaming facility operates or will operate. This practice allows the Commission to determine whether a management contract references a site that is ''Indian lands'' eligible for gaming as required under IGRA.

The proposed rule would change § 537.3 to increase the fee for background investigations. This would update the fee and make it closer to actual industry costs.

Finally, the proposed rule would replace the words ''modification'' and ''modify'' with ''amendment'' and ''amend'' in §§ 535.1, 535.3, 539.1, and 539.2 for purposes of internal consistency.

The only substantive comment received on proposed changes to these sections came from a tribe that objected to the addition of a legal description in the management contract submission package. As the amendment merely reflects existing practice, the Commission will propose the change.

D. Background and Licensing for Primary Management Officials and Key Employees

IGRA requires that tribes, through their gaming ordinances, maintain an adequate system of background investigations. 25 U.S.C. 2710(b)(2)(F). NIGC regulations, 25 CFR parts 556 and 558, implement this requirement. The proposed rule would remove language in 25 CFR 556.2, 556.3 and 558.2 referring to the employment of individuals as key employees and primary management officials and replace it with language referring to their licensure instead. A decision to license an applicant and a decision about an applicant's suitability (or eligibility) for licensure are separate and distinct from a decision to hire the applicant. These sections are concerned with licensure and suitability determinations, not employment decisions. The NIGC received tribal comments that approved of these changes.

These changes have implications for the use and distribution of gaming application information for key employees and primary management officials. As stated in the notice required by the proposed 25 CFR 556.2, application information may be ''disclosed * * * in connection with the issuance, denial, or revocation of a gaming license * * *.'' As such, the information could not, without otherwise complying with the requirements of the Privacy Act, 5 U.S.C. 552a, be provided to support employment decisions by prospective or current employers of the license applicant. This is a change from prior practice. Under the NIGC's existing regulations, application information can be disclosed in connection with the hiring and firing of an employee.

Finally, the amendments to 25 CFR 556.2, 556.3 and 558.2 will have implications for tribal gaming ordinances, but not immediately. Upon

the effective date, tribes do not have to immediately amend their gaming ordinances. However, following the effective date, whenever tribes amend their gaming ordinances, they must also make amendments conforming to the language in these sections.

E. Monitoring and Investigating

IGRA requires ordinances submitted for the Chairman's review to contain a provision requiring an annual audit. 25 U.S.C. 2710(b)(2). The NIGC's regulation, 25 CFR 571.12, creates standard procedures for the submission of the annual audit to the Commission, and § 571.13 deals with how and when a tribe submits an audit statement. The proposed rule would still require tribes to contract with independent certified public accountants that use Generally Accepted Accounting Principles and Generally Accepted Accounting Standards to complete their audits. However, the proposed rule would allow tribes with multiple facilities to consolidate their audit statements into one. Further, the proposed rule would allow operations earning less than $1 million in gross gaming revenue to file an abbreviated statement. Finally, the proposed rule would allow a tribe to submit an electronic version of an audit for so called ''stub periods'' of less than 1 year. The proposed rule would reflect common sense practice and reduce tribal costs and burden hours.

Tribal commenters supported the proposed rule's new consolidated audit statements but noted inconsistencies with accounting language and a misuse of accounting terms. The Commission agreed and modified the proposed rule to reflect standard practice and a proper use of accounting terms.

Tribal commenters also objected to the requirement of stub period audits under § 571.13 as burdensome. The proposed rule therefore would permit tribes to incorporate stub period audit information in the next fiscal year financial statement. This would alleviate any cost and time concerns.

NIGC regulation 25 CFR 573.6 discusses the Chairman's ability to close a gaming operation for any listed substantial IGRA violation. The proposed rule would add one substantial violation to the list and allow the Chairman to issue a temporary closure order for a gaming operation that operates on Indian land not eligible for gaming under IGRA. Indian gaming under IGRA must occur on ''Indian lands,'' 25 U.S.C. 2710(a), (b) and (d), as IGRA defines that term. 25 U.S.C. 2703(4). If Indian land is trust land acquired after October 17, 1988 (''after-acquired land''), then the land is eligible for gaming only if it meets one of the exceptions provided in 25 U.S.C. 2719. A gaming operation that operates on after-acquired land and does not meet one of the exceptions in § 2719 is in violation of IGRA. Operating illegally in this way is a substantial violation of IGRA that warrants immediate closure. The NIGC has not received comments on this part of the proposed rule.

Regulatory Matters

Regulatory Flexibility Act

Because the proposed rule would make only minor changes to existing rules, it will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, local government agencies, or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1). Regardless, the proposed rule does not impose an unfunded mandate on state, local, tribal governments, or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system, and it meets the requirements of section 3(a) and 3(b)(2) of that order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

The proposed rules does not require any significant changes in information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collections in the affected regulations are included within OMB control numbers 3141–0001 for part 571; 3141–0003 for parts 556 and 558; 3141–0004 for parts 531, 533, 535, 537, 539; and 3141–0007 for part 514.

List of Subjects in 25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571

Gambling, Indians-lands, Indians—tribal government, Reporting and recordkeeping requirements.

Text of the Proposed Rules

For the reasons set forth in the preamble, the Commission proposes to amend its regulations at 25 CFR Chapter III as follows:

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Add new paragraph (d) to § 502.14 to read as follows:

§ 502.14 Key employee.

* * * * *

(d) Any other person designated by the tribe as a key employee.

3. Revise § 502.16 to read as follows:

§ 502.16. Net revenues.

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

4. Revise § 502.17 to read as follows:

§ 502.17 Person having a direct or indirect financial interest in a management contract.

Person having a direct or indirect financial interest in a management contract means:

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10) shareholders for a privately held corporation;

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract; or

(f) Any person or entity who will receive a portion of the direct or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

5. Add new paragraph (d) to § 502.19 to read as follows:

§ 502.19 Primary management official.

* * * * *

(d) Any other person designated by the tribe as a primary management official.

6. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

7. Revise § 514.1 to read as follows:

§ 514.1 Annual fees.

(a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt preliminary rates for each calendar year no later than February 1st of that year, and, if considered necessary, shall modify those rates no later than July 1st of that year.

(2) The Commission shall publish the rates of fees in a notice in the **Federal Register**.

(3) The rates of fees imposed shall be—

(i) No more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

(4) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated class II gaming operations.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall be either the greater of:

(a) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% (two and one-half percent) of the cost of structures in use during only a part of the year; or

(b) An amount not to exceed 10% of the cost of the total amount of amortization depreciation expenses for the year.

(3) Examples of computations follow:

(a) For (2)(a):

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	$5,000	1,005,000
Less:		
Prizes paid in cash	500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
Maximum allowance:		
$750,000 × .05 =	37,500	
$50,000 × .025 =	1,250	38,750
Assessable gross revenues		456,250

(b) For (2)(b):

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	$5,000	
		1,005,000
Less:		
Prizes paid in cash	500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Allowance (depreciation expense for structures) per books	40,000	
Capital expenditures for structures:		
Capital expenditures for structures made in		
Prior years	750,000	
Current year	50,000	
Maximum allowance:		
$750,000 × .05 =	37,500	
$50,000 × .025 =	1,250	
Total maximum allowance	38,750	
Lesser of depreciation per books or maximum allowance		38,750
Assessable gross revenues		456,250

(4) All class II and III revenues from gaming operations are to be included.

(c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file with the Commission a statement showing its assessable gross revenues for the previous calendar year.

(1) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These statements shall be transmitted to the Commission to arrive no later than March 1st and August 1st of each calendar.

(3) The statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during the year.

(5) Each statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(5) (i) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(5)(iii) of this section by ½.

(v) The amount computed in paragraph (c)(5)(iv) of this section is the amount to be remitted.

(6) Examples of fee computations follows:

(i) Where a filing is made for March 1st of the calendar year, the previous year's assessable gross revenues are $2,000,000, the fee rates adopted by the Commission are 0.0% on the first $1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000 × 0.0%=	
2nd tier revenues—$500,000 × .08%=	$400
Annual fees	400
Multiply for fraction of year—½ or	.50
Fees for first payment	200
Amount to be remitted	200

(7) The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(8) The Commission may assess a penalty for failure to file timely a statement.

(9) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date (31 U.S.C. 3717).

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due by March 1st and August 1st of each calendar year.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended (Pub. L. 101–121; 103 Stat. 718; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.

8. The authority citation for part 531 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

9. Revise § 531.1 to read as follows:

§ 531.1 Required provisions.

Management contracts shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for amending or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

10. The authority citation for part 533 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 533.3 [Amended]

11. In § 533.1, remove paragraph (c).

12. Revise § 533.2 to read as follows:

§ 533.2 Time for submitting management contracts and amendments.

A tribe or a management contractor shall submit a management contract to the Chairman for review within thirty (30) days of execution by the parties. The Chairman shall notify the parties of their right to appeal the approval or disapproval of the management contract under part 539 of this chapter.

13. Revise § 533.3 to read as follows:

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§ 537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts and § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e)(1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For new contracts for existing operations, a three (3) year business plan which sets forth the parties goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(h) A legal description for the site on which the gaming operation to be managed is, or will be, located.

14. Revise § 533.4 to read as follows:

§ 533.4 Action by the Chairman.

(a) The Chairman shall approval or disapprove a management contract, applying the standards contained in § 533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not approved or disapproved the contract under this part.

§ 533.5 [Removed and Reserved]

15. Remove and reserve § 533.5.

16. Revise § 533.6 to read as follows:

§ 533.6 Approval and disapproval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part. Failure to comply with the standards of part 531 of this chapter or § 533.3 may result in the Chairman's disapproval of the management contract.

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his or her responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

17. Revise § 533.7 to read as follows:

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void.

18. The authority citation for part 535 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

19. Revise § 535.1 to read as follows:

§ 535.1 Amendments.

(a) Subject to the Chairman's approval, a tribe may enter into an amendment of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit an amendment to the Chairman within thirty (30) days of its execution.

(c) A tribe shall include in any request for approval of an amendment under this part:

(1) An amendment containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the amendment;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) A list of all persons and entities identified in § 537.1(a) and § 537.1(c)(1) of this chapter:

(i) If the amendment involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(A) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts or § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(B) The dates on which the information was previously submitted;

(ii) [Reserved]

(5) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d)(1) The Chairman shall approve or disapprove an amendment within thirty (30) days from receipt of a complete submission if the amendment does not require a background investigation under part 537 of this chapter, unless the Chairman notifies the parties in writing of the need for an extension of up to thirty (30) days.

(2) The Chairman shall approve or disapprove an amendment as soon as practicable but no later than 180 days from receipt of a complete submission if the amendment requires a background investigation under part 537 of this chapter;

(3) A party may appeal the Chairman's approval or disapproval of an amendment under part 539 of this chapter. If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved and a party shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e)(1) The Chairman may approve an amendment to a management contract if the amendment meets the submission requirements of paragraph (c) of this section. Failure to comply with the submission requirements of paragraph (c) of this section may result in the Chairman's disapproval of an amendment.

(2) The Chairman shall disapprove an amendment of a management contract for class II gaming if he or she determines that the conditions contained in § 533.6(b) of this chapter apply.

(3) The Chairman may disapprove an amendment of a management contract for class III gaming if he or she determines that the conditions contained in § 533.6(c) of this chapter apply.

(f) Amendments that have not been approved by the Chairman in accordance with the requirements of this part are void.

20. Revise § 535.3 to read as follows:

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, or 537 of this chapter, the Chairman may require modifications of, or may void, a management contract or amendment approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification or void proceedings by serving the parties, specifying the grounds for the modification or void. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make a decision on the basis of the developed record and notify the parties of the decision and of their right to appeal.

21. The authority citation to part 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

22. Revise § 537.1 to read as follows:

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) Required information. (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) Fingerprints. The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) Responses to Questions. Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Privacy notice. In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq*. The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a persons' Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) Notice regarding false statements. Each person required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) List of individuals. (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership;

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and

(iv) For any other type of entity, the ten (10) largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child or sibling and any person with management responsibility for that entity.

(2) Required information. (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any existing and previous business relationships with

Indian tribes, including ownership interests in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) Responses to questions. Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Notice regarding false statements. Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

23. Revise § 537.3 to read as follows:

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$25,000.

(2) Each individual and entity with a financial interest in the contract—$10,000.

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

24. The authority citation for part 539 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

25. Revise § 539.1 to read as follows:

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract or amendment under this subchapter, except that appeals from the Chairman's decision to require modifications of or to void a management contract or amendment subsequent to his or her initial approval are addressed in § 535.3 and part 577 of this chapter.

26. Revise § 539.2 to read as follows:

§ 539.2 Appeals.

A party may appeal the Chairman's approval or disapproval of a management contract or amendment under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. At the time of filing, an appeal under this section shall specify the reasons why the party believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute a final decision of the Commission.

27. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

28. Revise § 556.2 to read as follows:

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq*. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(c) All tribal gaming ordinances and ordinance amendments approved by the Chairman prior to the effective date of this section will require no changes to comply with this section. Future submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

29. Revise § 556.3 to read as follows:

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key

employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

(c) All tribal gaming ordinances and ordinance amendments approved by the Chairman prior to the effective date of this section will require no changes to comply with this section. Future submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

30. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

31. Revise § 558.2 to read as follows:

§ 558.2 Eligibility determination for granting a gaming license.

(a) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for granting of a gaming license. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not license that person in a key employee or primary management official position.

(b) All tribal gaming ordinances and ordinance amendments approved by the Chairman prior to the effective date of this section will require no changes to comply with this section. Future submissions, however, must comply.

32. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

33. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The independent certified public accountant must be licensed by a state board of accountancy. Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(c) If a gaming operation has assessable gross revenues of less than $1,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation;

(2) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years were timely received by the Commission in accordance with § 571.13; and

(3) The tribe must submit a statement to the Commission supporting the decision to use reviewed financial statements in place of audited financial statements. The statement is a one-time submission unless the tribe chooses another permissible filing alternative.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location;

(4) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years, whether or not consolidated, were timely received by the Commission in accordance with § 571.13;

(5) The tribe must submit a statement supporting the decision for consolidated financial statements in place of audited financial statements for each location. The statement is a one-time submission unless the tribe chooses another permissible filing alternative; and

(6) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has assessable gross revenues of less than $1,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location;

(4) Unless waived in writing by the Commission, the gaming operations' financial statements for the three previous years, whether or not consolidated, were timely received by the Commission in accordance with § 571.13;

(5) The tribe must submit a statement to the Commission supporting both the decision to use reviewed financial statements in place of audited financial statements and the decision to use consolidated financial statements in place of audited financial statements for each operation. The statement is a one-time submission unless the tribe chooses another permissible filing alternative; and

(6) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

34. Revise § 571.13 to read as follows:

§ 571.13 Copies of audit reports.

(a) Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), setting forth the results of each fiscal year. The submission must be received by the Commission within 120

days after the end of each fiscal year of the gaming operation.

(b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), setting forth the results of the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be received by the Commission within 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year.

(c) When gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by § 559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be received by the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

35. Revise § 571.14 to read as follows:

§ 571.14 Relationship of financial statements to fee assessment reports.

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each location and make available such reconciliation upon request by the Commission's authorized representative.

36. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

37. Add new paragraph (a)(13) to § 573.6 to read as follows:

§ 573.6 Order of temporary closure.

* * * * *

(13) A gaming facility operates on Indian lands not eligible for gaming under 25 U.S.C. 2703(4); 2710(a), (b)(1), and (d)(1); and 2719.

* * * * *

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Vice Chairman.

[FR Doc. E8–30019 Filed 12–19–08; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113462–08]

RIN 1545–BH77

Conduit Financing Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to conduit financing arrangements issued under the authority granted by section 7701(l) of the Internal Revenue Code (Code). The proposed regulations apply to multiple-party financing arrangements that are effected through disregarded entities, and are necessary in order to determine which of those arrangements should be recharacterized under section 7701(l) and Treas. Reg. § 1.881–3.

DATES: Written or electronic comments and requests for a public hearing must be received by March 23, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–113462–08), Internal Revenue Service, room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–113462–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–113462–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Quyen Huynh at (202) 622–3880 or John H. Seibert at (202) 622–3860; concerning submissions of comments, Oluwafunmilayo Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 7701(l) of the Code authorizes the Secretary to prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent the avoidance of any tax imposed by the Code. In Treasury decision 8611 (1995–37 IRB 20; 60 FR 40997), published August 10, 1995, the Treasury Department and the Internal Revenue Service (IRS) issued implementing regulations under Treas. Reg. § 1.881–3 relating to conduit financing arrangements pursuant to the authority granted by section 7701(l).

In general, § 1.881–3 allows the IRS to disregard the participation of one or more intermediate entities in a financing arrangement where such entities are acting as conduit entities, and to recharacterize the financing arrangement as a transaction directly between the remaining parties to the financing arrangement for purposes of imposing tax under sections 871, 881, 1441 and 1442 of the Code. Section 1.881–3(a)(2)(i)(A) of the regulations defines a financing arrangement to mean a series of financing transactions by which one person (the financing entity) advances money or other property, or grants rights to use property, and another person (the financed entity) receives money or other property, or rights to use property, if the advance and receipt are effected through one or more other persons (intermediate entities). Except in cases to which § 1.881–3(a)(2)(i)(B) (special rule for related parties) applies, the regulations apply only if financing transactions as defined in § 1.881–3(a)(2)(ii) link the financing entity, each of the intermediate entities, and the financed entity.

Since the publication of § 1.881–3 on August 10, 1995, the Treasury Department and IRS issued the so-called ''check-the-box'' regulations, under §§ 301.7701–1 through 301.7701–3, effective January 1, 1997 (TD 8697, 1997–1 CB 215; 61 FR 66854). Section 301.7701–3 provides, in part, that an entity that is not classified as a corporation and that has a single owner may elect to be disregarded as an entity separate from its owner (a disregarded entity).

The Treasury Department and IRS are aware that issues have arisen regarding the proper treatment of disregarded entities under § 1.881–3. These proposed regulations clarify that a disregarded entity is a person for purposes of § 1.881–3. Thus, transactions that a disregarded entity enters into will be taken into account for purposes of determining whether a financing arrangement exists.

The Treasury Department and IRS are continuing to study conduit financing arrangements and may issue separate guidance to address the treatment under § 1.881–3 of certain hybrid instruments. Specifically, the Treasury Department and IRS are studying transactions where a financing entity advances cash or other property to an intermediate entity in exchange for a hybrid instrument that is treated as debt under the laws of the foreign jurisdiction where the

intermediate entity is resident and is not treated as debt for U.S. federal tax purposes. The issue under consideration is whether such instruments should constitute a financing transaction under § 1.881–3(a)(2)(ii)(A) and part of a financing arrangement within the meaning of § 1.881–3(a)(2)(i)(A). No inference should be drawn from the approaches described in this preamble regarding the treatment of such instruments under current law, including judicial doctrines with respect to conduit financing transactions.

One possible approach is to treat all transactions involving such hybrid instruments between a financing entity and an intermediate entity as financing transactions under § 1.881–3(a)(2)(ii)(A). Comments are requested on this approach, including whether and to what extent a connection or relationship between the issuer and recipient of the hybrid instrument (for example, an equity ownership percentage) should be required in order to treat such instruments as financing transactions.

Another possible approach is to add additional factors to consider in determining when stock in a corporation (or other similar interest in a partnership or trust) may constitute a financing transaction under § 1.881–3(a)(2)(ii)(B). The additional factors would focus on whether, based on the facts and circumstances surrounding the stock (or other similar interest in a partnership or trust), the financing entity had sufficient legal rights to, or other practical assurances regarding, the payment received by the intermediate entity to treat the stock as a financing transaction. Some possible factors to indicate the presence of a financing transaction might include:

(1) Intent of the parties to pay all or substantially all payments received by the intermediate entity to the financing entity;

(2) History of payment of amounts received by the intermediate entity to the financing entity; and

(3) Precedence of the obligees over other creditors regarding the payment of interest and principal, currently or in bankruptcy.

Comments are requested concerning other possible approaches and any additional factors that the Treasury Department and IRS should consider in expanding the conduit financing regulations under § 1.881–3.

Explanation of Provisions

Section 1.881–3(a)(2)(i)(C) of the proposed regulations provides that for purposes of this section, the term *person* includes a business entity that is disregarded as an entity separate from its single member owner under §§ 301.7701–1 through 301.7701–3. Because a disregarded entity is a person, any transaction that it enters into will be taken into account for purposes of determining whether a conduit financing arrangement exists.

These proposed regulations also modify the parenthetical in § 1.881–3(a)(2)(ii)(A)(*2*) and § 1.881–3(a)(2)(ii)(B)(*1*). The proposed regulations also correct a typographical error in § 1.881–3(a)(3)(ii)(B) of the final regulations and update titles and cross-references in the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Paul J. Carlino, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.881–3 is amended by:

1. Removing the language ''district director'' throughout this section and adding ''director of field operations'' in its place.

2. Removing the language ''§ 1.1441–3(j)'' throughout this section and adding ''§ 1.1441–3(g)'' in its place.

3. Removing the language ''§ 1.1441–7(d)'' throughout this section and adding ''§ 1.1441–7(f)'' in its place.

4. In the last sentence of paragraph (a)(3)(ii)(B), removing the second ''financed'' and adding ''financing'' in its place.

5. Removing the parenthetical language ''(or a similar interest in a partnership or trust)'' in paragraphs (a)(2)(ii)(A)(*2*) and (a)(2)(ii)(B)(*1*) and adding ''(or a similar interest in a partnership, trust, or other person)'' in its place.

6. Adding a new paragraph (a)(2)(i)(C).

7. In paragraph (e), redesignating *Examples* 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 as *Examples* 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, respectively.

8. Adding a new *Example 3* in paragraph (e).

9. Adding a new sentence at the end of paragraph (f).

The additions read as follows:

§ 1.881–3 Conduit financing arrangements.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(C) *Treatment of disregarded entities.* For purposes of this section, the term *person* includes a business entity that is disregarded as an entity separate from its single member owner under §§ 301.7701–1 through 301.7701–3.

* * * * *

(e) *Examples.* * * *

Example 3. Participation of a disregarded intermediate entity. (i) The facts are the same as in *Example 2*, except that, in addition, FS is an entity that is disregarded as an entity separate from its owner, FP, under § 301.7701–3. Under paragraph (a)(2)(i)(C) of this section, FS is a person and therefore may

itself be an intermediate entity that is linked by financing transactions to other persons in a financing arrangement. The DS note held by FS and the FS note held by FP are financing transactions within the meaning of paragraph (a)(2)(ii) of this section, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

* * * * *

(f) *Effective/applicability date.* * * * Paragraph (a)(2)(i)(C) of this section is effective for payments made on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30301 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–160872–04]

RIN 1545–BF59

Section 6707 and the Failure To Furnish Information Regarding Reportable Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6707 of the Internal Revenue Code (Code), which provide the rules relating to the assessment of penalties against material advisors who fail to timely file a true and complete return required under section 6111(a). The regulations implement the amendments to section 6707 by the American Jobs Creation Act and promote material advisors' compliance with the regulations under section 6111. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111.

DATES: Written or electronic comments and request for a public hearing must be received by March 23, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–160872–04), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160872–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–160872–04).

FOR FURTHER INFORMATION CONTACT: Matthew S. Cooper, (202) 622–4940 (not a toll-free number); concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulation Branch at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6707 of the Internal Revenue Code. Section 6707 was originally added to the Code by section 141(b) of the Tax Reform Act of 1984, Public Law 98–369, 98 Stat. 494. At that time, section 6707 imposed a penalty for failing to timely register a tax shelter or for filing false or incomplete information with respect to the tax shelter registration. Treasury Regulation § 301.6707–1T was issued shortly after section 6707 became law.

The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. AJCA section 816 amended section 6707 to impose a penalty on a material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction, and who fails to file a timely return or who files a return with false or incomplete information with respect to the reportable transaction. Section 6707, as amended, is effective for returns due after October 22, 2004. The amount of the penalty for failing to timely file or filing a return with false or incomplete information with respect to any reportable transaction other than a listed transaction is $50,000. For listed transactions, the amount of the penalty is the greater of (1) $200,000, or (2) 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is filed under section 6111. If the penalty is imposed with respect to a listed transaction and the failure or action subject to the penalty was intentional, the penalty is the greater of (1) $200,000, or (2) 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that the material advisor provides with respect to the listed transaction before the date the return is filed under section 6111. The provisions of section 6707A(d) regarding rescission of the penalty apply to any penalty assessed under section 6707.

To implement the pertinent provisions of the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004–80 (2004–2 CB 963, December 13, 2004); Notice 2005–17 (2005–1 CB 606, February 22, 2005); Notice 2005–22 (2005–1 CB 756, March 21, 2005); and Notice 2006–6 (2006–1 CB 385, January 30, 2006) (see § 601.601(d)(2)(ii)(*b*)). These notices provided guidance to a material advisor required to file a return under section 6111, including rules regarding the date by which the material advisor must file the return and the information the material advisor must include on the return. Subsequently, the IRS and Treasury Department proposed amendments to the rules relating to the disclosure of reportable transactions by material advisors under section 6111 (see Prop. Treas. Reg. § 301.6111–3, 71 FR 64501) and finalized those proposed regulations as TD 9351 in the **Federal Register** (72 FR 43157). The IRS and Treasury Department are now proposing rules relating to the AJCA amendments to section 6707.

Rev. Proc. 2007–21, 2007–9 IRB 613, which was published on February 26, 2007, provides guidance to persons against whom a penalty under section 6707 or 6707A is assessed regarding procedures for requesting that the Commissioner of the Internal Revenue Service rescind all or a portion of these penalties with respect to a reportable transaction other than a listed transaction.

Explanation of Provisions

These proposed regulations provide rules reflecting the AJCA amendments to the section 6707 penalty for the failure to timely file a return under section 6111 or for filing a return with false or incomplete information regarding reportable transactions. The scope of the changes to the section 6707 penalty provisions by the AJCA necessitates a change to the temporary regulations promulgated under former section 6707.

Under these proposed revisions, a penalty under section 6707 may be assessed against each material advisor required to file a return under section 6111 who fails to file a timely return in accordance with § 301.6111–3(e) or files a return with false or incomplete information. Accordingly, if more than one material advisor is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under

section 6707 may be assessed against each material advisor who fails to timely file a return or files a return with false or incomplete information.

Additionally, § 301.6707–1(b)(4) of these proposed regulations provides that *incomplete information* means a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the IRS that does not provide the information required under § 301.6111–3(d). A return will not be considered incomplete when the information not provided on the Form 8918 (or successor form) is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. The proposed regulations also provide that material advisors who complete the form to the best of their ability and knowledge after the exercise of reasonable efforts to obtain the information will not be considered to have filed an incomplete form within the meaning of this section. A Form 8918 (or successor form), however, will be considered intentionally incomplete (and, in the case of a listed transaction, subject to the increased penalty imposed by section 6707(b)) when it omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request.

False information under proposed § 301.6707–1(b)(5) means information provided on a Form 8918 (or successor form) to the IRS that is untrue or incorrect when the Form 8918 (or successor form) was filed. Information filed with the IRS will not be considered false when the return contains untrue or incorrect information by mistake or accident after the exercise of reasonable care or when the untrue or incorrect information is immaterial.

Under proposed § 301.6707–1(b)(6), the failure to timely file or the submission of false or incomplete information is intentional if the material advisor knew of the obligation to file a return under section 6111, and knowingly did not timely file a return with the IRS; or filed a return knowing that it was false or incomplete. In the case of a listed transaction, the failure to timely file a true and complete return will not be considered intentional if the material advisor remedies this failure by filing a true and complete return with the IRS prior to the earlier of the date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction. This rule is intended to encourage material advisors to correct material defects in their compliance with section 6111, and recognizes that by voluntarily correcting material defects the material advisors demonstrate an intent to comply with section 6111.

The proposed regulations in § 301.6707–1(c)(2) state that a separate penalty may be assessed against each material advisor for its own failure to timely file the required return. If multiple material advisors (all with filing obligations under section 6111) enter into a designation agreement (within the meaning of § 301.6111–3(f)) designating one material advisor to file the required return on behalf of all parties to the agreement, the section 6707 penalty may be imposed upon each party to the agreement if the material advisor designated to file the return either fails to timely file a return or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to timely file a true and complete return, a nondesignated material advisor will not be considered to have intentionally violated its obligations under section 6111 unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to timely file a true and complete return.

Section 301.6707–1(d) of these proposed regulations provides several examples illustrating the potential application of the section 6707 penalty. Included are examples showing that the gross income derived by the material advisor will be determined in accordance with § 301.6111–3(b)(3)(ii) for purposes of calculating the amount of the penalty with respect to a listed transaction.

Section 301.6707–1(e) of these proposed regulations restates the existing authority of the Secretary to prescribe the procedures to request rescission of a section 6707 penalty with respect to a nonlisted reportable transaction by revenue procedure or other guidance published in the Internal Revenue Bulletin. Rev. Proc. 2007–21 describes the procedures for requesting rescission of a penalty assessed under section 6707, including the deadline by which a person must request rescission; the information the person must provide in the rescission request; the factors that weigh in favor of and against granting rescission; where the person must submit the rescission request; and the rules governing requests for additional information from the person requesting rescission.

These proposed regulations provide factors that the Commissioner (or the Commissioner's delegate) should take into account during the determination whether to rescind all or a portion of any penalty imposed under section 6707. The proposed regulations generally adopt the list of factors stated in Rev. Proc. 2007–21, which factors are consistent with the legislative history of section 6707. See H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. at 599 (2004). The factors identified in these proposed regulations do not represent an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list, and will generally favor rescission when the relevant factors and circumstances suggest that sustaining assessment of the penalty is against equity and good conscience.

One additional factor identified in the temporary regulations recently promulgated under section 6707A as weighing in favor of granting rescission that is not proposed to be adopted for purposes of rescission of the penalty under section 6707 is the extent to which the penalty assessed is disproportionately larger than the tax benefit received. The material advisor does not receive a tax benefit from the reportable transaction, but rather benefits from the transaction through the gross income derived for aiding, assisting, or advising on the transaction. The threshold of gross income for status as a material advisor under section 6111 in the case of a reportable transaction is $50,000 if substantially all of the tax benefits from the transaction are provided to natural persons (looking through any partnerships, S corporations, or trusts). For all other nonlisted reportable transactions, the threshold amount is $250,000. The gross income levels necessary to be treated as a material advisor substantially ensure that any penalty imposed upon a material advisor under section 6707 will not be disproportionate to the benefit received by the material advisor.

Because it is the policy of the IRS to administer penalties in a manner that promotes voluntary compliance with the tax laws, the fact that a material advisor voluntarily files the form required under section 6111 prior to the earlier of: (i) The date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or (ii) the date the IRS contacts the material advisor concerning the reportable transaction will weigh strongly in favor of rescission. See IRS Policy Statement 20–1 (June 29, 2004).

The proposed regulations mirror Rev. Proc. 2007–21 in providing that a rescission request is not the appropriate forum to contest whether the elements necessary to support a penalty under section 6707 exist. That question is for the examining agent, the IRS Office of Appeals, and the courts. A rescission determination is based on the premise that a violation of section 6707 exists but, nonetheless, the penalty should be rescinded (or abated). Accordingly, the proposed regulations provide that the Commissioner (or the Commissioner's delegate) will not consider whether the material advisor in fact failed to comply with section 6111. Furthermore, these regulations provide that the Commissioner (or the Commissioner's delegate) will not take into consideration doubt as to liability for, or collectibility of, the penalties in determining whether to rescind the penalty.

Proposed Effective Date

These regulations are proposed to apply to returns the due date of which is after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

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

Par. 2. Section 301.6707–1 is added to read as follows:

§ 301.6707–1 Failure to furnish information regarding reportable transactions.

(a) *In general*. A material advisor who is required to file a return under section 6111(a) with respect to any reportable transaction, who fails to file a timely return in accordance with § 301.6111–3(e) or who files a return with false or incomplete information with respect to the reportable transaction, will be subject to a penalty. The amount of the penalty for failing to timely file or filing a false or incomplete return with respect to any reportable transaction other than a listed transaction is $50,000. The amount of the penalty with respect to a failure relating to any listed transaction is the greater of $200,000 or 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111. If the failure or action subject to the penalty is with respect to a listed transaction and is intentional, the penalty is the greater of $200,000 or 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111. For purposes of calculating the amount of the penalty with respect to a listed transaction, the gross income derived by the material advisor will be determined in accordance with § 301.6111–3(b)(3)(ii).

(b) *Definitions*—(1) *Reportable transaction*. The term ''reportable transaction'' is defined in § 1.6011–4(b)(1) of this chapter.

(2) *Listed transaction*. The term ''listed transaction'' is defined in section 6707A(c) of the Code and § 1.6011–4(b)(2) of this chapter.

(3) *Material advisor*. The term ''material advisor'' is defined in section 6111(b)(1) of the Code and § 301.6111–3(b).

(4) *Incomplete information*. For purposes of this section, *incomplete information* means a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the IRS that does not provide the information required under § 301.6111–3(d). Information filed with the IRS will not be considered incomplete when the information not provided on the Form 8918 (or successor form) is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. A material advisor who completes the form to the best of their ability and knowledge after the exercise of reasonable effort to obtain the information will not be considered to have filed incomplete information within the meaning of this section. A Form 8918 (or successor form) will be considered to provide incomplete information when it omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request. For listed transactions, a Form 8918 (or successor form) that omits information required to be provided under § 301.6111–3(d) and contains a statement that the omitted information will be provided upon request will be considered an intentional submission of a return with incomplete information within the meaning of paragraph (b)(6) of this section.

(5) *False information*. For purposes of this section, *false information* means information provided on a Form 8918 (or successor form) filed with the IRS that is untrue or incorrect when the Form 8918 (or successor form) was filed. False information does not include information provided on a Form 8918 (or successor form) filed with the IRS that is immaterial or that is untrue or incorrect due to a mistake or accident after the exercise of reasonable care.

(6) *Intentional*. For purposes of this section, the failure to timely file a return or the submission of a return with false or incomplete information is *intentional* if—

(i) The material advisor knew of the obligation to file a return and knowingly did not timely file a return with the IRS; or

(ii) The material advisor filed a return knowing that it was false or incomplete.

(7) *Derive.* The term ''derive'' is defined in § 301.6111–3(c)(3).

(c) *Assessment of penalty*—(1) *Individual liability.* If there is more than one material advisor who is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under section 6707 may be assessed against each material advisor who fails to timely file or files a false or incomplete return. The determination of whether the failure or action subject to the penalty is intentional will also be made individually for each material advisor with respect to the same reportable transaction. The higher penalty will not apply to any material advisor whose failure to file timely or whose furnishing of false or incomplete information is unintentional. The failure to timely file a return, or filing a return with false or incomplete information, will be considered unintentional if the material advisor subsequently files a true and complete return prior to the earlier of the date that any taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction.

(2) *Designation agreements.* A material advisor who is required to file a return under section 6111 and who is a party to a designation agreement within the meaning of § 301.6111–3(f) is subject to a penalty under section 6707 if the designated material advisor fails to timely file a return or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to timely file a return, or files a return with false or incomplete information, the nondesignated material advisor who is a party to the designation agreement will not be treated as intentionally failing to file the return, or intentionally filing a return with false or incomplete information, unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to timely file a true and complete return.

(d) *Examples.* The rules of paragraphs (a) through (c) of this section are illustrated by the following examples:

Example 1. Advisor A becomes a material advisor as defined under section 6111(b) and § 301.6111–3(b) in the fourth quarter of 2009 with respect to a reportable transaction other than a listed transaction, and Advisor B also becomes a material advisor in the same quarter with respect to the same reportable transaction. Subsequently, Advisors A and B fail to timely file the Form 8918. Because the section 6707 penalty applies to each material advisor independently, Advisors A and B each are subject to a penalty of $50,000.

Example 2. Same as *Example 1*, except that Advisor B timely filed the Form 8918 with the IRS Office of Tax Shelter Analysis (OTSA). Advisors A and B did not enter into a designation agreement. Accordingly, only Advisor A is subject to a $50,000 penalty.

Example 3. Advisor C becomes a material advisor to Client X on January 5, 2009, with respect to a listed transaction. Advisor C derives $400,000 in gross income from his advice to Client X because he expects to receive that amount from Client X, even though he has not yet received that amount. Advisor C unintentionally does not file a Form 8918. On January 5, 2010, Advisor C becomes a material advisor to Client Y with respect to the same type of listed transaction. The gross income Advisor C expects to receive from his advice to Client Y is $100,000. Advisor C does not become a material advisor with respect to any other client and unintentionally does not file a Form 8918. Advisor C is subject to a penalty of $250,000 (50 percent of the gross income he derived) under section 6707.

Example 4. Same as *Example 3*, except that Advisor C files the Form 8918 on November 15, 2009, which is beyond the date prescribed for filing the disclosure statement. Advisor C is subject to a $200,000 penalty under section 6707 because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to the listed transaction did not include gross income for advice to Client Y.

Example 5. Same as *Example 3*, except that Advisor C files the Form 8918 on February 15, 2010, which is beyond the date prescribed for filing the disclosure statement. Advisor C is subject to a $250,000 penalty under section 6707 because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to the listed transaction included gross income for advice to Client X and Client Y.

Example 6. Advisor D becomes a material advisor as defined under section 6111(b) and § 301.6111–3(b) in the first quarter of 2009 with respect to a reportable transaction other than a listed transaction. Advisor D does not file a Form 8918 by April 30, 2009. The transaction is then identified as a listed transaction in published guidance on July 7, 2009. Advisor D knew that it had a new obligation to file a Form 8918 by October 31, 2009, and intentionally fails to file the Form 8918. Advisor D is subject to only one penalty, in the amount of the greater of $200,000 or 75 percent of the gross income he derived from the transaction, for intentionally failing to disclose the listed transaction in accordance with § 301.6111–3(d)(1) and (e).

(e) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707 penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction and

(ii) Rescinding the penalty would promote compliance with the requirements of the Internal Revenue Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a material advisor to request rescission of a section 6707 penalty by revenue procedure or other guidance published in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The material advisor, upon becoming aware that it failed to properly disclose a reportable transaction, filed a complete and proper, albeit untimely, Form 8918 (or successor form). This factor will weigh strongly in favor of rescission provided that the material advisor files the form required under section 6111 prior to the earlier of the date that any taxpayer files a Form 8886 identifying the material advisor with respect to the reportable transaction in question or the date the IRS contacts the material advisor concerning the reportable transaction.

(ii) The material advisor's failure to properly disclose the reportable transaction was due to an unintentional mistake of fact that existed despite the material advisor's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The material advisor has an established history of properly disclosing other reportable transactions and complying with other tax laws, including compliance with any requests made by the IRS under section 6112, if applicable.

(iv) The material advisor demonstrates that the failure to include on any return or statement any information required to be disclosed

under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in Rev. Proc. 2007–21 (or successor document) (see § 601.601(d)(2)(ii)(*b*)) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for, or collectibility of, the penalties.

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30303 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2008–0841, FRL–8755–5]

Approval and Promulgation of Implementation Plans; New Jersey; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to New Jersey's State Implementation Plan (SIP) submitted on November 3, 2008. The proposed SIP revision includes a regulation that allows for continuation of New Jersey's statewide nitrogen oxides (NO_X) budget and NO_X allowance trading program beyond the year 2008. New Jersey's program began in 2003 for large electric generating units and industrial sources. The intended effect of this proposed SIP revision is to allow the continuation of the State's program to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is proposing this action pursuant to section 110 of the Clean Air Act.

DATES: Written comments must be received on or before January 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2008–0841, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2008–0841. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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I. What action is EPA proposing to take?

EPA is proposing to approve a revision to New Jersey's ground level ozone SIP which New Jersey submitted on November 3, 2008, which was published in the *New Jersey Register* on November 17, 2008. The proposed SIP revision includes an amended regulation, New Jersey Administrative Code (N.J.A.C.) 7:27–31 (Subchapter 31), ''NO_X Budget Program.'' New Jersey amended Subchapter 31 to allow the continuation of New Jersey's NO_X Budget Program beyond December 31, 2008. EPA proposes that New Jersey's submittal is fully approvable as a SIP strengthening measure for New Jersey's ground level ozone SIP and EPA has determined that it meets EPA guidance and the air quality objectives of the Clean Air Act (the Act).

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the State's proposed revision is substantially changed when it submits its final rule, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the proposed SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

II. Why is EPA proposing this action?

EPA is proposing this action in order to:

- Approve the continuation of a control program which reduces NO_X emissions, a precursor to ozone, and which therefore helps to achieve the national ambient air quality standard for ozone,
- Fulfill New Jersey's and EPA's requirements under the Act,
- Allow federal enforceability and SIP credit to continue for New Jersey's NO_X Budget Program,
- Give the public an opportunity to submit written comments on EPA's action, as discussed above in the **DATES** and **ADDRESSES** sections.

III. When did New Jersey submit the proposed SIP revision to EPA and what did it include?

New Jersey submitted the amended Subchapter 31 to EPA on November 3, 2008. New Jersey's proposed SIP revision repeals N.J.A.C. 7:27–31.23, the expiration of the State's NO_X Budget Program. N.J.A.C. 7:27–31.23 currently provides that the NO_X Budget Program would cease to exist beyond December 31, 2008, and provides for reconciliation in the event a source has insufficient NO_X Budget allowances to meet its obligation at the end of the program. Therefore, upon New Jersey's adoption, and EPA approval, of the amended Subchapter 31, N.J.A.C. 7:27–31.23 will no longer apply and New Jersey's NO_X Budget Program will continue to apply to NO_X Budget sources as of the control period beginning in 2009 and any control period thereafter.

IV. What guidance did EPA use to evaluate New Jersey's proposed SIP revision?

To evaluate New Jersey's proposed SIP revision, EPA relied on information contained in a letter, dated September 2, 2008, from Robert J. Meyers, EPA's Principal Deputy Assistant Administrator, addressed to Lisa P. Jackson, Commissioner of the New Jersey Department of Environmental Protection. The reader may view this guidance document at *http://www.regulations.gov,* as discussed above in the Docket section.

V. What is the result of EPA's evaluation of New Jersey's proposed SIP revision?

EPA has evaluated New Jersey's proposed SIP revision submittal and proposes to find it approvable. New Jersey's proposed SIP revision is consistent with EPA's September 2, 2008 letter which asks New Jersey to reinstate the NO_X Budget Program before May 1, 2009. The November 3, 2008 submittal will enable New Jersey to continue its NO_X Budget Program beyond December 31, 2008 requiring affected sources to reduce NO_X emissions during the ozone season control period of 2009 and beyond, thereby helping New Jersey to attain the national ambient air quality standard for ozone.

VI. What is New Jersey's NO_X Budget Program?

In response to EPA's 1998 NO_X SIP Call regulation, New Jersey amended Subchapter 31, ''NO_X Budget Program.'' With Subchapter 31, New Jersey established a NO_X cap and allowance trading program for the ozone season (May 1 through September 30). New Jersey developed the regulation in order to reduce NO_X emissions and allow its sources to participate in EPA's interstate NO_X allowance trading program described in § 51.121(b)(2). Subchapter 31 establishes a statewide NO_X emissions cap of 8200 tons during the ozone season for all affected sources. Subchapter 31 applies to all electric generating units with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-electric generating units that have a heat input capacity greater than 250 million BTUs per hour.

For further details concerning New Jersey's NO_X Budget Program refer to EPA's proposed rule 65 FR 71278 (November 30, 2000), and a corrected proposed rule 65 FR 77695 (December 12, 2000) and EPA's final rulemaking 66 FR 28063 (May 22, 2001) approving Subchapter 31.

VII. Proposed Action

EPA has reviewed New Jersey's November 3, 2008 SIP submittal and finds it approvable. Therefore, EPA proposes approval of the revised Subchapter 31 into the New Jersey SIP at this time.

VIII. Administrative Requirements

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 10, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–30378 Filed 12–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8753–6]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; stay.

SUMMARY: EPA is proposing to extend the stay of certain provisions of the new standards of performance for petroleum refineries. In the ''Rules and Regulations'' section of this **Federal Register**, we are extending the stay 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: Written comments must be received by January 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0011, by mail to Air and Radiation Docket (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to take action on the new standards of performance for petroleum refineries at 40 CFR part 60, subpart Ja. We have published a direct final rule extending the stay of the provisions under reconsideration in the ''Rules and Regulations'' 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 we receive no adverse comment, we will not take 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 this 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. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS [1] code	Examples of regulated entities
Industry	32411	Petroleum refiners.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards for petroleum refineries. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of the new source performance standards to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Orders

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the ''Rules and Regulations'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 60

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

Dated: December 12, 2008.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

§ 60.100a [AMENDED]

2. In § 60.100a, paragraph (c) is stayed from February 24, 2009, until further notice.

§ 60.101a [AMENDED]

3. The definition of ''flare'' in § 60.101a is stayed from February 24, 2009, until further notice.

§ 60.102a [AMENDED]

4. In § 60.102a, paragraph (g) is stayed from February 24, 2009, until further notice.

§ 60.107a [AMENDED]

5. In § 60.107a, paragraphs (d) and (e) are stayed from February 24, 2009, until further notice.

[FR Doc. E8–29973 Filed 12–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700, 720, 721, 723, and 725

[EPA–HQ–OPPT–2008–0296; FRL–8395–8]

RIN 2070–AJ41

TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the Toxic Substances Control Act (TSCA) section 5 Premanufacture and Significant New Use Notification regulations to facilitate the introduction and use of electronic reporting. This action is intended to streamline and reduce the administrative costs and burdens of TSCA section 5 notifications for both industry and EPA by establishing standards and requirements for the use of EPA's Central Data Exchange (CDX) to electronically submit premanufacture notices (PMNs) and other TSCA section 5 notices and support documents to the Agency. EPA is also proposing to amend the TSCA section 5 User Fee regulations to add a new User Fee Payment Identity Number field to the PMN form, which would enable the Agency to match more easily a particular user fee with its notice submission. Lastly, EPA is proposing to remove the Agent signature block field on the PMN form, and thus the requirement for designated Agents to sign the form.

DATES: Comments must be received on or before February 20, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0296, 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–2008–0296. 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–2008–0296. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8469; e-mail address: *schweer.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture, import, or process chemicals for commercial purposes. Potentially affected entities may include, but are not limited to:

• Manufacturers, importers, and processors of chemical substances or mixtures (NAICS codes 325 and 324110, e.g., chemical manufacturing and processing and petroleum refineries).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR parts 700, 720, 721, 723, and 725 for TSCA section 5–related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is proposing amendments to TSCA section 5 Premanufacture and Significant New Use Notification regulations and related provisions to facilitate the introduction and required use of a new electronic reporting mechanism.

The Government Paperwork Elimination Act (GPEA) (Public Law 105–277 (44 U.S.C. 3504)) requires that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public. EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3), published in the **Federal Register** of October 13, 2005 (70 FR 59848) (FRL–7977–1) provides that any requirement in title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions once the Agency publishes a notice that electronic document submission is available for that requirement. See Unit III.F. for more information on electronic signatures.

In light of GPEA and CROMERR, EPA is proposing these amendments to enable, and eventually require, manufacturers (including importers), and processors of TSCA chemical substances to use the Internet, through EPA's CDX, to submit TSCA section 5 notices to the Agency. These include PMNs (40 CFR part 720), Significant New Use Notices (SNUNs) (40 CFR part 721), Test Market Exemption Applications (TMEAs) (40 CFR part 720), Low Volume Exemption notices (LVEs) (40 CFR 723.50), Low Exposure/Low Release Exemption (LoRex) notices (40 CFR 723.50), biotechnology notices for genetically modified microorganisms (40 CFR part 725), Notices of Commencement of Manufacture or Import (NOCs) (40 CFR 720.102), and other support documents (e.g., correspondence, requests for suspensions of the notice review period, amendments, and test data).

The Agency is proposing to introduce CDX reporting in two phases over a 2–year period. During the first year following the effective date of the final rule, the Agency would allow submissions via CDX, optical disc, and paper. Regardless of the delivery method, EPA would require that all submissions be generated using the new electronic-PMN (e-PMN) software. One year after the final rule's effective date, paper submissions would no longer be accepted for any new notices and support documents (including NOCs). Two years after the final rule's effective date, disc-based submissions (e.g., CDs) for all new notices and support documents would no longer be accepted. In the third year after the final rule's effective date, all submitters would be required to submit all notices and support documents identified in Table 1 of Unit III.I. electronically via CDX using the e-PMN software. The Agency is proposing this phased approach because it would allow submitters to gain experience in using the e-PMN software and the submission delivery system.

EPA is also proposing to amend the TSCA section 5 User Fee regulations at 40 CFR 700.45 to add a new User Fee Payment Identity Number field to the PMN form. This would enable the Agency to match more easily a particular user fee with its notice submission. The second new information element on the amended PMN form would be optional and consist simply of the e-mail address for the authorized official submitting the notice listed on the ''Submitter Identification'' section on page three of the PMN form. EPA is also proposing to remove the required Agent signature block field on page two of the form.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before manufacturing (under TSCA manufacture includes import) a new chemical substance for commercial purposes. Section 3(9) of TSCA defines a ''new chemical substance'' as any substance that is not on the Inventory of

Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before manufacturing or processing the chemical substance for that use. GPEA requires that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public.

C. How are Premanufacture Notices and Other TSCA Section 5 Notices Currently Submitted and Processed by the Agency?

Currently, TSCA section 5 submissions must be sent to EPA on paper through the U.S. mail or delivered by courier. Submitters are able to generate certain TSCA section 5 notices electronically using the PMN form available at the EPA New Chemicals Program website (*https://cdx.epa.gov/ssl/pmn/download.asp*). The form uses Adobe Acrobat Reader software, which allows submitters to complete the form electronically, and then print out and mail it to EPA as hard copy. The software is free and allows the user to complete the form and print it, but it does not allow the user to save the form. Approximately 35% of TSCA section 5 notices are currently generated using this software. Most of the remaining submissions are generated using other Agency-approved software that has been developed by industry trade groups or individual notice submitters. A very small percentage of submitters choose to fill out the PMN form by hand or typewriter, using a version of the form downloaded from EPA's TSCA New Chemicals Program website (See *http://www.epa.gov/opptintr/newchems/pubs/pmnpart1.pdf* and *http://www.epa.gov/opptintr/newchems/pubs/pmnpart2.pdf*).

If the submitter marks anything on the PMN form as CBI, then the submitter must submit a version of the form with the CBI and another version of the form without CBI. The latter version is referred to as the sanitized or non-CBI version and is required for the public docket.

Upon receipt at EPA, paper submissions are assigned a ''mail received'' number, which is used to identify the submission until an official document control number (DCN) is generated, which does not occur until EPA verifies that the notice is complete. Once the mail information is captured, the submission is sent for prescreening. During prescreening, the submission is checked for completeness using criteria listed at 40 CFR 720.65. If the notice does not pass prescreening, EPA declares the original notice ''Incomplete'' and notifies the submitter that there is missing or incorrect information, and that the submitter must correct the package and provide a new submission to EPA. If a new notice is not submitted, EPA will return the user fee.

After a successful prescreening, EPA generates a DCN and barcode for the submission. EPA also generates a DCN and barcode for the non-CBI version of a CBI submission and places the non-CBI version in the public docket. The original CBI submission is then kept in a physical case file folder for reference. Any supporting documents for the submission are also assigned DCNs and placed in the physical case file folders.

III. Description of Proposed Changes for TSCA Section 5 Reporting

This unit provides a detailed description of EPA's electronic reporting software, the proposed changes to the reporting process, the benefits of electronic reporting to both industry and EPA, and how EPA is proposing to phase-in the electronic reporting.

A. What is CDX?

EPA's CDX is the point of entry on the Environmental Information Exchange Network (Exchange Network) for environmental data submissions to the Agency. CDX provides the capability for submitters to access their data through the use of web services. CDX enables EPA and participating program offices to work with stakeholders–including State, tribal, and local governments and regulated industries–to enable streamlined electronic submission of data via the Internet. For more information about CDX, go to *http://www.epa.gov/cdx*.

B. What is the e-PMN Software?

EPA has developed new e-PMN software for use in preparing and submitting PMNs and other TSCA section 5 notices and support documents electronically to the Agency. The e-PMN software would be available as a free Internet download from the Agency's website (*http://www.epa.gov/oppt/newchems*) or on optical discs provided by the Agency upon request. The e-PMN software works with Windows, Macs, Linux, and UNIX-based computers, using XML (short for ''Extensible Markup Language'') specifications for more efficient data transmittal across the Internet. The e-PMN software operates using the Java 6 programming language, which can be downloaded free from *http://www.java.com*, if it is not already installed on your computer. The e-PMN software would provide user-friendly navigation, work with CDX to secure on-line communication, and create a completed Portable Document Format (PDF) file using the PMN form to accommodate internal company review prior to submission.

The e-PMN software includes features intended to be helpful for preparing PMNs and other notices using the PMN form, such as SNUNs. A validation mechanism would alert users when a field on the form, required by regulation, is either missing information or contains certain kinds of potentially incorrect information. For example, if ''use'' information is claimed CBI, then the e-PMN software would indicate that the form is not complete unless the submitter has provided both specific use information on the CBI version of the form and generic use information on the non-CBI version of the form. The e-PMN software includes header pages for biotechnology notices (i.e., Microbial Commercial Activity Notices (MCANs), TSCA Experimental Release Applications (TERAs), TMEAs, and Tier I or Tier II Exemption requests), support documents, and attachments—any document not submitted on the PMN form itself—that identify submitters and the nature of their communications.

Guidance documents developed by EPA for TSCA section 8(a) Inventory Update Rule (IUR) reporting via CDX are available at *http://www.epa.gov/opptintr/iur/pubs/factsheet.pdf* and *http://www.epa.gov/opptintr/iur/pubs/cdx_qanda.pdf*. These documents provide background information on reporting via CDX that is relevant and useful for TSCA section 5 reporting as well. EPA would provide similar specific guidance for TSCA section 5 reporting via CDX, along with the e-PMN submission software, at the New Chemicals Program homepage (*http://www.epa.gov/oppt/newchems*) by the effective date of the final rule.

C. What are the Benefits of CDX Reporting and Use of the e-PMN Software, Compared to the Existing Paper Method?

The proposed change to phase-out paper-based submissions in favor of CDX reporting, including use of the e-PMN reporting software, for TSCA

section 5 notices and support documents is in concert with broader government efforts to move to modern, electronic methods of information gathering. The required use of CDX for submission of TSCA section 5 notices and support documents would be consistent with the GPEA requirement that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public.

The e-PMN software and electronic submission via CDX would change the way that companies interact with the Agency regarding many TSCA section 5 submissions. Companies would be registered with EPA to submit their data electronically to the Agency via CDX and the Agency in turn would benefit from receiving electronic submissions and being able to communicate back electronically with submitters. Data systems that once were populated manually would now be populated electronically reducing the potential for error that exists when data are entered by hand.

Agency personnel would also be able to communicate more efficiently with submitters electronically, compared to using U.S. mail. Two examples of routine communications from EPA that would go through CDX rather than the U.S. mail are the Acknowledgment Letter (acknowledging receipt of a notice), and the Incomplete Letter (stating why a notice has been declared incomplete). PMN electronic reporting software allows for more efficient data transmittal, and the software's validation mechanism should help industry users submit fewer incomplete notices, which ultimately would save EPA and industry processing resources and reduce transaction times. EPA believes the adoption of electronic communications would reduce the reporting burden on industry by reducing both the cost and the time required to review, edit, and transmit data to the Agency. It also would allow submitters to share a draft notice within the company during the creation of a notice and to save a copy of the final file for future use. A ''Profiler,'' available in the software, would also allow for certain information to be kept on file by the submitter to avoid re-entering the same information into a new form.

All information sent by EPA or the submitter via CDX would be transmitted securely to protect CBI. Furthermore, if anything in the submission has been claimed CBI, a non-CBI copy of the notice must be provided by the submitter. The new e-PMN software would facilitate the creation of this non-CBI version, eliminating the need for the submitter to do this manually.

D. What are the Proposed Changes to the Existing PMN Form?

EPA is proposing to amend the PMN form in order to collect two new information elements. First, 40 CFR part 700 requires submitters to pay a fee when they submit PMNs, MCANs, certain PMN exemption application notices, and SNUNs to the Agency. The amended PMN form would include a new User Fee Payment Identity Number field to enable the Agency to match more easily a particular user fee with a particular notice submission. A User Fee Payment Identity Number would be required and may be either a check number, a wire transfer number, or a ''Pay.gov'' transaction number used to transmit the user fee electronically. The second new information element on the amended PMN form would be optional and consist simply of the e-mail addresses for the authorized officials listed on the Submitter Identification section on page three of the PMN form. The e-mail address would enable the Agency to contact the submitter through e-mail, facilitating communications related to the submission.

EPA is also proposing to remove the required Agent signature block field on page two of the PMN form. On the existing PMN form, if a manufacturer/importer subject to the notice requirements in 40 CFR part 720 designates an Agent to submit the form pursuant to 40 CFR 720.40(e), both the manufacturer/importer and the Agent must sign the form. EPA is proposing to remove the requirement that Agents sign the PMN form because few Agents have submitted forms in the past, and the Agent signature block is rarely used by the Agency. Eliminating the second signature also simplifies development of the e-PMN form. Note that a form submitted by an Agent would still have to be signed by the manufacturer/importer's authorized company official, and the Agent's name and contact information would still be provided on page three of the PMN form. The authorized company official remains responsible for false or misleading statements in the notice.

The e-PMN software would allow users to print paper copies for internal company use. The printed version of the amended e-PMN form would have the same general look of the current paper PMN form, i.e., containing the same fields (with the modifications to the form discussed in Unit III.D.) and the same pagination. However, fields have been expanded to make more room for submitter information, resulting in a larger total number of pages, and realigned to make the form easier to scan. Under this proposed rule, persons who choose to submit PMNs on paper during the first year after the effective date of the final rule would be required to use the new e-PMN software to generate the paper form for each PMN or other TSCA section 5 notice they submit. EPA is proposing this requirement because the Agency has incorporated into the form many scanning efficiencies for the electronic capturing of data that would be lost if a blank PMN form is printed, photocopied, and used for another submission.

E. How Would PMNs be Submitted via the Internet Using CDX?

The Internet submission of TSCA section 5 notices would require submitters to use the e-PMN software to prepare a data file and to register with EPA's CDX under ''New Chemicals Submissions.''

1. *Registering with CDX.* To register with CDX, the submitter would be directed to *http://cdx.epa.gov/epa_home.asp*. The submitter would be asked to agree to Terms and Conditions, provide information about the submitter and his/her organization, select a user name and password, and download, complete and mail an electronic signature agreement to EPA (discussed further in Unit III.F.). The electronic signature agreement is needed to identify an authorized person and establish a method to electronically sign the submission. Once EPA receives the electronic signature agreement, the submitter's user name and password will be activated, and only then would the submitter be able to send a submission to EPA through CDX. For planning purposes, please allow up to 1 week for EPA to process the electronic signature agreement and activate the user name and password.

2. *Preparing the submission.* All submitters would be required to use the new e-PMN software to prepare their submissions of TSCA section 5 notices. The e-PMN software would be available for free as a download from EPA's New Chemicals Program website at *http://www.epa.gov/oppt/newchems* or mailed on an optical disc upon request. The e-PMN software guides users through the process of creating a PMN submission on their computers. Once a user completes the relevant data entry, the software would validate the submission by performing basic error checks and making sure all the required fields are completed, allow the user to create and save the submission for company

records, and prompt users to choose a submission method.

3. *Completing the submission to EPA.* During the 2–year phase-in period when paper and/or optical disc submission would still be allowed, the software would, as appropriate, also allow the user to choose ''Print,'' ''Save as a PDF,'' ''Save as an XML file'' for a submission on an optical disc, or ''Transmission through CDX.'' While permitted, submissions made in paper or using an optical disc would need to be mailed or delivered to EPA in the same manner that they are currently. When ''Transmission through CDX'' is selected, the user would be asked to provide the user name and password that were created during the CDX registration process. The software would then encrypt the file and submit it via CDX to EPA's New Chemical System (NCS).

F. What is the Electronic Signatures Agreement?

In order to submit electronically to EPA via CDX, individuals acting on behalf of the submitter must first register with CDX. One must register either as:

1. An authorized official of a company who can send all types of TSCA section 5 documents to EPA via CDX, or

2. Someone authorized by the authorized official to send TSCA section 5 supporting documents to EPA via CDX. Note, however, that authorized company officials are the only persons allowed to send TSCA section 5 notices and Letters of Support to EPA via CDX.

There are two ways that joint submissions would be submitted to EPA via CDX. The first way is for each joint submitter to fill out his or her portion of the submission in separate notice forms. These forms are linked to each other within EPA via a common unique identifying number—a ''TS'' number (see proposed regulatory text language in 40 CFR 700.45(e)(3))—which both companies are required to develop together and put on their respective forms. The second way is for one of the joint submitters to provide supporting information in a Letter of Support. Both would require the authorized company officials of the joint submitting companies to register in order to submit to EPA via CDX.

To register in CDX, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') downloads two forms: The Electronic Signature Agreement and the Verification by Company Authorizing Official Form. Registration enables CDX to perform two important functions: Authentication of identity and verification of authorization. For authentication of identity, the submitter completes the Electronic Signature Agreement form along with a signature and date, has the form notarized, and mails it back to EPA. The Verification by Company Authorizing Official Form requires the signatures of the authorized company official and anyone he/she authorizes to submit support documents for the company. There are separate designations for submitter in this form: The submitter is the authorized company official or the submitter is one of the following persons authorized by the authorized company official—a paid employee of the company, an outside consultant for the company, or an authorized representative agent for the company. When these forms are received, EPA activates the submitter's registration in CDX and sends him or her an e-mail notification. Submitters would need to complete and sign these forms only once.

G. Would CBI be Protected When Submitting via CDX?

Yes. EPA would ensure secure transmission of PMN data sent from the user's desktop through the Internet via the Transport Layer Security (TLS) 1.0 protocol. TLS 1.0 is a widely used approach for securing Internet transactions, and is endorsed by the National Institute of Standards and Technology (NIST) for protecting data sent over the Internet. See NIST Special Publication 800–52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*, *http://csrc.nist.gov/publications/nistpubs/800-52/SP800-52.pdf*.

In addition, e-PMN software supports EPA's CROMERR requirements, as described under 40 CFR part 3, by enabling the submitter to electronically sign, encrypt, and submit submissions which EPA subsequently provides back to the submitter as an unaltered copy of record. This assures the submitter that the Agency has received exactly what the submitter sent to EPA. The current version of e-PMN encrypts using a module based on the 128-bit Advanced Encryption Standard (AES) adopted by NIST. AES is implemented as part of the Sun Java Runtime Environment (JRE) 5, which is bundled as part of e-PMN installation. Details about AES can be found on the NIST website at *http://csrc.nist.gov/publications/fips/fips197/fips-197.pdf*, and information on Sun JRE implementation of AES can be found at *http://java.sun.com/developer/technicalArticles/Security/AES/AES_v1.html*. As appropriate, EPA may incorporate other encryption modules into future versions of e-PMN (such versions might be developed before or after the final rule is to take effect) depending upon availability and suitability.

Information submitted via CDX is processed within EPA by secure systems certified for compliance with Federal Information Processing Standards.

EPA solicits comment on the security of transmission of e-PMN information via CDX.

H. Would I be Required to Use the e-PMN Software for Any Paper or Optical Disc Submissions During the 2–Year Phase-In Period?

Yes. Under this proposed rule, submitters would be required to use the e-PMN software to generate TSCA section 5 notices, NOCs, and support documents, regardless of whether they are submitted via CDX, on optical disc, or in paper form. EPA would not accept paper submissions that use either the old version of the paper PMN form or the amended form filled in by hand or typewriter. The Agency would make available free web downloads or, upon request, optical discs that contain the e-PMN software. All e-PMN software users, regardless of how a document is submitted, would need to undergo a ''finalization'' step in generating a document. During the finalization step, the e-PMN software checks that all required fields contain information and provides warnings for certain kinds of missing, incomplete, or incorrect data. Notices containing data which have not undergone finalization would be declared ''Incomplete'' by EPA. This step is necessary to allow for an accurate and efficient transfer of data from an optical disc or a paper form to the EPA data systems, and also enables the generation of a non-CBI version.

Anyone submitting the paper form that was generated using the e-PMN software would submit their notices to the Agency via U.S. mail or a courier service. The paper form would be signed on page 2. If the submitter makes any CBI claims, the original submission would need to include both the CBI version and a non-CBI version.

Optical discs would be submitted with an original signed hard copy of page 2 (Certification page) and a hard copy of page 3 (a copy of page 3 is needed for contact information in the event that the optical disc is not readable). Optical discs would need to be delivered only by courier service to avoid damage to the disk from the Agency's mail screening equipment.

I. How Would Electronic Submission of TSCA Section 5 Notices that Currently Have No Required or Official Forms be Handled by CDX or the e-PMN Software?

Certain TSCA section 5 notices such as LVE modifications, LoRex modifications, TMEAs, and biotechnology notices currently have no required or official forms. In order to allow for electronic and paper submission of these notices using the e-PMN software and CDX, the Agency is proposing the following:

1. For exemption modifications, submitters would use the e-PMN form by checking the ''modification'' box on page 1, filling in contact information on page 3, and including the previous exemption number and chemical identity information. A submitter may send a cover letter with the new revisions to the original exemption notice or the pertinent pages of the e-PMN form.

2. For a TMEA, the submitter would check the ''TMEA'' box on page 1 of the e-PMN form, and either fill out the form or attach a cover letter for the submission containing the information required by 40 CFR 720.38.

3. Biotechnology notices would have their own menu option. Instead of selecting ''Premanufacture Notice,'' a submitter would select ''Biotechnology,'' which would prompt the software to present a header page to the submitter with choices of biotechnology notices, and space to fill in contact information. The information required by 40 CFR part 725 would be submitted as an attachment(s).

The notices listed in Unit III.I.1. through 3. would need to undergo the ''finalization'' step (see Unit III.H.). An exemption submission on an optical disc would need to be accompanied by a complete signed hard copy of page 2 and a complete hard copy of page 3 of the e-PMN form for contact information in case the optical disc is not readable. The TMEA would only need a complete page 3. The optical discs for both types of submissions would need to be delivered by courier to the Agency to avoid damage to the disk from the Agency's mail screening equipment. If submitted by paper, the forms would need to be generated using the e-PMN software and sent to the Agency. For biotechnology notices, a signed hard copy of a biotechnology certification would need to accompany the optical disc. The printed form would follow the same procedures: Use the e-PMN software to generate a finalized ''header'' sheet with contact data, add an attachment with notice information, and include a signature page.

The proposed submission process for completing the various notice and document types is summarized in Table 1 of this unit. After the effective date of the final rule, all of these notices would be prepared using the new e-PMN software.

TABLE 1.—PROPOSED PROCESS FOR PREPARING TSCA SECTION 5 NOTICES AND SUPPORT DOCUMENTS

TSCA Section 5 Documents	Proposed Process
PMNs and SNUNs	Form 7710–25 generated and finalized by e-PMN software.
LVE	Form 7710–25 generated and finalized by e-PMN software.
TMEA	e-PMN software to generate finalized submission either using Form 7710–25 or cover letter and attached information.
NOC	e-PMN software to generate finalized submission using Form 7710–56.
Biotechnology notices	e-PMN software to generate finalized ''header'' sheet with contact data, add attachment with notice information, include signature page.
Modifications to previous notices	Form 7710–25 generated and finalized by e-PMN software. Fill in pages 1, 2, and 3 of the Form, plus either applicable pages of Form, cover letter, or attachment.
Support documents	e-PMN software to generate finalized ''header'' sheet identifying reason for submission and contact data.

J. How Would Delivery Methods to EPA Vary for Submissions via Paper, Optical Disc, or CDX?

Depending upon how a notice is submitted, the following delivery methods would be used:

1. *Paper*. Printed, signed, and ''header'' sheets for attachments; delivered by mail or courier, allowed for the first year.

2. *Optical discs*. Data must be saved as XML files rather than as PDF files. Optical discs submitted with an original signed hard copy of page 2 (Certification page) and a hard copy of page 3. Delivered by courier only. Allowed for the first 2 years only.

3. *CDX*. Document developed on-line; simply hit ''send button'' to deliver to EPA via CDX.

K. Over What Time-Frame Would the Proposed Internet-Based CDX Reporting Requirement be Phased-In?

The Agency is proposing to introduce electronic reporting in three phases. In the first phase, the Agency would allow the submission of TSCA section 5 notices and support documents via CDX, on optical disc, and on paper. All submissions (whether submitted via CDX, on optical disc, or on paper) would be required to be generated using the new e-PMN software.

In the second phase, occurring 1 year after the effective date of the final rule, paper submissions would no longer be accepted for any new notices and support documents (including NOCs). In the third phase, at the end of the second year after the effective date of the final rule, optical disc submissions for all new notices and support documents would no longer be accepted. Thereafter, EPA would accept only TSCA section 5 notices and support documents submitted through CDX. TSCA section 5 notices and support documents not submitted in the appropriate manner (and, for paper or optical disc submissions, during the time allowed for in the phase-in period) as described in this unit would be considered invalid by EPA and returned to the submitter. The Agency considers the proposed 2–year phase-in period to be enough time for submitters to gain experience using the CDX submission method and specifically seeks comments on this approach.

Note that NOCs and support documents whose original notices were submitted before the effective date of the final rule would still need to be mailed as hard copy to the Agency. This is necessary because, although the notices received after implementation of the new system will be entered into the newly created EPA database, notices submitted before promulgation of this rule will only exist in EPA's ''legacy'' database, i.e., the database used prior to promulgation of this rule, and so a subsequent support document would not be able to be linked up with its parent notice within EPA's new database. The proposed phase-in schedule for submissions is displayed in Table 2 of this unit.

TABLE 2.—PROPOSED E-PMN PHASE-IN SCHEDULE FOR TSCA SECTION 5 NOTICES AND SUPPORT DOCUMENTS[1]

Submission Method	Before Effective Date of Final Rule	First Year After Effective Date of Final Rule	Second Year After Effective Date of Final Rule	Third Year After Effective Date of the Final Rule, and Thereafter
Paper	Existing PMN form	Scanner-friendly paper form, generated and finalized using e-PMN software	Invalid	Invalid
Optical disc	Not applicable	Electronic submission generated and finalized using e-PMN software.	Electronic submission generated and finalized using e-PMN software.	Invalid
CDX/Internet	Not applicable	Available and optional	Available and optional	Mandatory

[1] NOCs and support documents for notices originally submitted on paper before the new system is implemented would still need to be mailed as hard copy.

L. Would EPA Offer Any Exceptions to the Proposed Requirements?

No. After careful consideration, the Agency has concluded that the overall benefits from everyone using the e-PMN software and submission through CDX exceed those associated with maintaining a multi-optioned reporting approach (Ref. 1). The Agency recognizes that there is the potential for costs and burden associated with predictable or unanticipated technical difficulties in electronic filing or with conversion to an electronic CDX reporting format. However, EPA expects that reduced reporting costs to submitters would ultimately exceed the transition costs and that any transition difficulties would be mitigated by:

1. The phase-in periods proposed.
2. EPA's planned outreach and training sessions prior to the effective date of the final rule. The Agency will allow ample time between the date of publication and the effective date of the final rule for submitters to install and become proficient with the e-PMN software.
3. EPA's planned technical support following the final rule's effective date.

M. Will All Types of TSCA Section 5 Notices and Communications be Submitted via e-PMN Software?

At this time, the Agency does not have electronic reporting capability for all TSCA section 5-related notices and support documents, due to the variability and infrequent nature of certain types of submissions. Examples are the Notice of *Bona Fide* Intent to Manufacture (''*bona fide*'') and prenotice communications. EPA may consider offering electronic reporting of these and other submissions in the future.

IV. Estimated Economic Impact

The Agency's estimated economic impact of this proposal is present in a document entitled *Economic Analysis of the Proposed Amendments to TSCA Section 5 Premanufacture and Significant New Use Notification Requirements* (Ref. 1), a copy of which is available in the docket and is briefly summarized in this unit. EPA estimates that the electronic submission option would reduce the burden and cost associated with reporting for PMNs and other TSCA section 5 notices and support documents. The burden estimation of 95 to 114 hours to complete the currently existing paper PMN form includes the time spent reading and becoming familiar with the form, gathering the required information and preparing the report, producing non-CBI responses for items claimed as CBI, and maintaining a file of the submission (Ref. 2).

In its economic analysis for the proposed rule (Ref. 1), EPA estimated cost and burden savings at the industry level, at the individual company level, and on a per-form basis. Estimates presented in this unit are for all TSCA section 5 notices; estimates for PMNs separately can be found in the economic analysis.

At the industry level for all TSCA section 5 notices, EPA estimates a net total burden decrease of 14,972 hours in the first year of the rule, 15,700 hours in the second year of the rule, and 16,178 hours in the third year of the rule. Industry savings are estimated at 16,187 hours per year for subsequent years of the rule. At the company level for all TSCA section 5 notices, EPA estimates an average net total burden decrease of 50.4 hours in the first year of the rule, 51.2 hours in the second and third years of the rule, and 50.4 hours per year for subsequent years of the rule.

At the industry level for all TSCA section 5 notices, EPA estimates a net cost savings of $379,271 in the first year of the rule, $424,863 in the second year of the rule, and $457,066 in the third year of the rule. Industry savings are estimated at $457,628 per year for subsequent years of the rule. When taking into account the lower total number of notices expected during this 3–year ICR period in addition to savings attributable to the rule, the average annual reduction in industry costs is $5.7 million. At the company level for all TSCA section 5 notices, EPA estimates an average cost savings of $1,352 in the first year of the rule, $1,396 in the second and third years of the rule, and $1,352 in subsequent years of the rule.

EPA estimates that the Agency also will experience a reduction in both burden and cost to administer the TSCA section 5 notice program as a result of the proposed rule. Specifically, EPA expects to experience a net burden reduction of 4,521 hours in the first year of the rule, a reduction of 9,042 hours in the second year of the rule, and a reduction of 13,563 hours in the third and subsequent years of the rule. The Agency expects to experience a net savings of $214,377 in the first year of the rule, a net savings of $586,108 in the second year of the rule, and a net savings of $1,057,838 in the third and subsequent years of the rule.

EPA recognizes that information and feedback received during the 2–year proposed phase-in period, along with experience gained during this phase-in period, can be used to further improve the use of the new Internet-based reporting mechanism. This information will also inform the Agency's estimates, which will be reflected in the Information Collection Request, which EPA must complete every 3 years under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

V. Request for Comment

The Agency is making the e-PMN software available during the public comment period for this proposed rule. This will enable stakeholders to use the software on a test basis, which includes the ability to submit test notices via

CDX to EPA. The e-PMN software and guidance for CDX registration and submission is available at the Agency's website (*http://www.epa.gov/oppt/newchems*) or on optical discs provided by the Agency upon request. In addition, the following are two topics on which the Agency is specifically requesting public comment. EPA encourages all interested persons to submit comments on these two topics or other relevant topics, as well as on the use of the e-PMN software and submission of notices via CDX. This input will assist the Agency in developing a rule that successfully addresses information needs while minimizing potential reporting burdens associated with the rule. EPA requests that commenters making specific recommendations include supporting documentation where appropriate, including cost and burden estimates.

1. Based on the expected efficiency of electronic reporting via the Internet, EPA believes that companies would be supportive of the proposed rule and would quickly take advantage of the new Internet-based reporting system, moving away from paper or optical disc reporting. EPA specifically seeks comment on whether the proposed 2–year phase-in period following promulgation of the final rule, during which time paper and/or optical disc submissions would be accepted, is reasonable or necessary to allow sufficient time to transition to the new Internet-based method. Would enabling stakeholders to test the system prior to, and technical assistance after, the effective date of the final rule be sufficient to prepare industry for the new CDX submission method? Should there be no phase-in period, or a period shorter than 2 years? Does the proposed phase-in period approach overly complicate reporting?

2. EPA expects that electronic submission would reduce burden associated with reporting under TSCA section 5. EPA is seeking information that might further inform the Agency's burden estimates. Because use of CDX would be optional during the 2–year phase-in period, it is uncertain how many submitters would choose to take advantage of this submission method during that period. Therefore, estimated costs presented by EPA for submitters (reporting burden) and the Agency (time required for manual processing of data) may be overestimates of actual costs to the extent that submitters are able to use the electronic submission tool sooner. For example, do you intend to begin using CDX as soon as it is available? If not, when would you expect to begin using CDX and why? Are there implementing factors that you expect to use in making your decisions that EPA should consider in evaluating the Agency's estimates? Are there any factors that would facilitate your earlier implementation of CDX? How much time does it take you to fill out and submit a notice via CDX, compared to the current paper method?

VI. References

The public docket for this proposed rule has been established. The following is a listing of the documents referenced in this preamble that have been placed in the public docket for this proposed rule under docket ID number EPA–HQ–OPPT–2008–0296, which is available for inspection as specified under **ADDRESSES**.

1. EPA. Economic and Policy Analysis Branch, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis of the Proposed Amendments to TSCA Section 5 Premanufacture and Significant New Use Notification Requirements. October 6, 2008.

2. EPA. Regulatory Impacts Branch, OPPT. Regulatory Impact Analysis of Amendments to Regulations for TSCA Section 5 Premanufacture Notifications. September 9, 1994.

3. EPA. Supporting Statement for a Request for OMB Review Under The Paperwork Reduction Act. Information Collection Request (ICR): New Information Collection Activities Related to Electronic Submission of Certain TSCA Section 5 Notices EPA ICR No. 2327.01. OMB Control No. 2070–NEW.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for OMB approval under PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA, identified under EPA ICR No. 2327.01 and OMB control number 2070–NEW, is available in the docket for the proposed rule (Ref. 3). This ICR will amend the two currently approved ICR documents that cover the existing reporting and recordkeeping programs that are approved under OMB control number 2070–0012 and 2070–0038. 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.

The amended information collection activities contained in this proposed rule are designed to assist the Agency in meeting its responsibility under TSCA to receive, process, and review PMNs and SNUNs in a timely manner and further the proper performance of the functions of the Agency. Information collection for review of PMNs and SNUNs is authorized by TSCA section 5 and confidentially of submitted information is protected under TSCA section 14.

The information collected under the two existing ICRs, as consolidated into the new ICR, would be modified by the addition of two new data elements:

1. A User Fee Payment Identity Number.

2. The submitter's (authorized official's) e-mail address(es).

The other revision to the information collection activities already approved by OMB, would be the change affecting how the submitter completes and submits the required form to EPA. As such, responses to the collection of information covered by this ICR would still be mandatory, but with the final rule, respondents would be required to use the e-PMN software to complete the form. The methods for submitting the completed form to EPA would change over a 2–year period following the effective date of the rule to allow for the new required submission through CDX to be fully implemented.

Burden is defined at 5 CFR 1320.3(b). The ICR document for this proposed rule provides a detailed presentation of the estimated burden and costs for 3 years of the program. The aggregate burden varies by year during the first 3 years of the rule because of the phase-in schedule of the proposed requirements. The rule-related burden and cost to chemical manufacturers, importers, and processors who would submit notices to the Agency for review is summarized here. The projected total burden to industry is 363 hours per year for the first 3 years of the rule. This includes an estimated average burden per response of 0.9 hours for CDX registration, 1.8 hours for requesting a CDX electronic signature, 0.1 hours for establishing an account for electronic fee payments, and 0.8 hours for rule familiarization.

Any comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any

suggested methods for minimizing respondent burden, should be directed to the docket for this proposed rule, under docket ID number EPA–HQ–OPPT–2008–0296. You may also submit a copy of your comments on the ICR to OMB. See **ADDRESSES** for submission of comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., 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 December 22, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by January 21, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this proposed rule, if promulgated as proposed, would not have a significant adverse economic impact on a substantial number of small entities, due to the burden-reducing nature of this action, which will benefit all submitters regardless of the size of the entity.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this document 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.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant adverse economic impact on a substantial number of small entities, an agency may certify that a rule will not have a significant adverse 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. This proposed rule is expected to reduce the existing regulatory burden. The factual basis for the Agency's certification under the RFA is presented in the small entity impact analysis prepared as part of the Economic Analysis for this proposed rule (Ref. 1), and is briefly summarized in Unit IV.

D. Unfunded Mandates Reform Act

Based on EPA's experience with past PMNs and SNUNs, State, local, and tribal governments have not been affected by these reporting requirements, and EPA does not have any reason to believe that any State, local, or tribal government will be affected by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

Under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications'' because it would 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 the Executive Order. This proposed rule would establish electronic notification requirements that apply to manufacturers (including importers) and processors of certain chemicals. This proposed rule would not apply directly to States and localities and would not affect State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it would not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. EPA has no information to indicate that any tribal government manufactures or imports the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

This proposed rule would not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more, nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this proposal does not have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. This proposed rule would not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

This proposed rule would not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

List of Subjects in 40 CFR Parts 700, 720, 721, 723, and 725

Environmental protection, Chemicals, Electronic reporting, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 700—[AMENDED]

1. The authority citation for part 700 is revised to read as follows:

Authority: 15 U.S.C 2625 and 2665, 44 U.S.C. 3504.

2. By revising § 700.45(e)(1); (e)(2); (e)(3); (e)(4)(i), (ii), and (iv); and (e)(5)(i), (ii), and (iv) to read as follows:

§ 700.45 Fee payments.

* * * * *

(e) * * *

(1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, wire transfer, Pay.gov service provided through the Department of the Treasury, or check drawn to the order of the Environmental Protection Agency.

(2) Each paper remittance shall be sent to the Environmental Protection Agency, Washington Finance Center, Toxic Substances Control Act User Fees, P.O. Box 979073, St. Louis, MO 63197–9000.

(3) Persons who submit a TSCA section 5 notice shall place a unique identifying number and a payment identity number on the front page of each section 5 notice submitted. The unique identifying number must include the letters ''TS'' followed by a combination of 6 numbers (letters may be substituted for some numbers). The payment identity number may be a check number, a wire transfer number, or a ''Pay.gov'' transaction number used to transmit the user fee. The same TS number and the submitter's name must appear on the corresponding fee remittance under this section. If a remittance applies to more than one section 5 notice, the person shall include the name of the submitter and a new TS number for each section 5 notice to which the remittance applies, and the amount of the remittance that applies to each notice. Any remittance not having the identifying name and numbers described in this paragraph will be returned to the remitter.

(4)(i) Each person who remits the fee identified in paragraph (b)(1) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption application under TSCA section 5(h)(2) shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the exemption application.

* * * * *

(iv) Each person who remits the fee identified in paragraph (b)(1) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the certification required in § 725.25(b) of this chapter.

(5)(i) Each person who remits a fee identified in paragraph (b)(2) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee specified in 40 CFR 700.45(b).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits a fee identified in paragraph (b)(2) of this section for an exemption application under TSCA section 5(h)(2) shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee specified in 40 CFR 700.45(b).'' in the exemption application.

* * * * *

(iv) Each person who remits the fee identified in paragraph (b)(1) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the certification required in § 725.25(b) of this chapter.

* * * * *

PART 720—[AMENDED]

3. The authority citation for part 720 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

4. By adding paragraphs (ii), (jj), (kk), and (ll) to § 720.3 to read as follows:

§ 720.3 Definitions.

* * * * *

(ii) *e-PMN software* means electronic-PMN software, including associated instructions, created by EPA for use in preparing and submitting Premanufacture Notices (PMNs) and other TSCA section 5 notices and support documents electronically to the Agency.

(jj) *Central Data Exchange* or *CDX* means EPA's centralized electronic document receiving system, or its successors, including associated instructions for registering to submit electronic documents.

(kk) *Optical disc* means compact disc (CD) or digital video disc (DVD).

(ll) *Support documents* means materials and information submitted to EPA in support of a TSCA section 5 notice, including but not limited to Letters of Support (see § 720.40(e)(2) and § 725.25(e)(2) of this chapter), correspondence, amendments, and test data. The term ''support documents'' does not include orders under TSCA section 5(e) (either consent orders or orders imposed pursuant to TSCA section 5(e)(2)(B)).

5. By revising § 720.40(a)(2), (c), (d)(2), (e)(1), and (e)(2) to read as follows:

§ 720.40 General.

(a) * * *

(2) All notices must be submitted on EPA Form 7710–25. Notices, and any support documents related to these notices, may only be submitted in a manner set forth in this paragraph.

(i) *Paper-based submissions.* Notices, and any support documents related to these notices, may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based notices must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print EPA Form 7710–25 for submission to EPA. Paper notices, and any support documents related to such notices, must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(A) Support documents for notices that are submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(B) [Reserved]

(ii) *Submissions on optical disc*—(A) Notices may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All notices submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Persons submitting on optical disc must also complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25.

(iii) *Submissions via CDX*. Notices and any related support documents may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software.

(iv) You can obtain the e-PMN software and reporting instructions and CDX reporting instructions as follows:

(A) *Website*. Go to the EPA TSCA New Chemicals Program Internet homepage at *http://www.epa.gov/oppt/newchems* and follow the appropriate links.

(B) *By phone or e-mail*. Call the EPA CDX Call Center at (866) 411–4372 (4EPA)

(C) *E-mail*. *epacallcenter@epa.gov*.

* * * * *

(c) *Where to submit a notice or support documents*. For submitting notices or support documents via CDX, use the e-PMN software. Paper notices or support documents must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Optical discs containing electronic notices or support documents must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004. Persons submitting on optical disc must also complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25.

(d) * * *

(2) If information is claimed as confidential pursuant to § 720.80, a person who submits a notice to EPA in the manner set forth in § 720.40(a)(2)(i), (ii), or (iii) must also provide EPA with a sanitized copy.

(e) * * *

(1) A manufacturer or importer may designate an agent to assist in submitting the notice. If so, only the manufacturer or importer, and not the agent, signs the certification on the form.

(2) A manufacturer or importer may authorize another person, (e.g., a supplier or a toll manufacturer) to report some of the information required in the notice to EPA on its behalf. The manufacturer or importer should indicate in a cover letter accompanying the notice which information will be supplied by another person and identify that other person as a joint submitter where indicated on their notice form. The other person supplying information (i.e., the joint submitter) may submit the information to EPA using either the notice form or a Letter of Support, except that if the joint submitter is not incorporated, licensed, or doing business in the United States, the joint submitter must submit the information to EPA in a Letter of Support only, not in a notice form. The joint submitter must indicate in the notice or Letter of Support the identity of the manufacturer or importer. Any person who submits a notice form or Letter of Support for a joint submission must sign and certify the notice form or Letter of Support.

* * * * *

6. By revising paragraphs (a) and (c)(1)(iv) and adding paragraph (c)(x) to § 720.65 to read as follows:

§ 720.65 Acknowledgment of receipt of a notice; errors in the notice; incomplete submissions; false and misleading statements.

(a) *Notification to the submitter*. EPA will acknowledge receipt of each notice that has been submitted via CDX with a computer response via CDX that identifies the premanufacture notice number assigned to the new chemical substance and the date on which the review period begins. If the notice is submitted on paper or via optical disc, in accordance with § 720.40(a)(2)(i) or (ii), EPA will acknowledge receipt of the notice by sending the submitter a letter that identifies the premanufacture notice number assigned to the new chemical substance and the date on which the review period begins. After [date 731 days after effective date of the final rule], all acknowledgements will be made via CDX. The review period will begin on the date the notice is received by the Office of Pollution Prevention and Toxics Document Control Officer. The acknowledgment does not constitute a finding by EPA that the notice, as submitted, is in compliance with this part.

* * * * *

(c) * * *

(1) * * *

(iv) The submitter does not submit the notice in the manner set forth in § 720.40(a)(2).

* * * * *

(x) The submitter does not include a unique identifying number and a payment identity number as required by 40 CFR 700.45(e)(3).

* * * * *

7. By revising paragraphs (b)(2) and (e)(1) and adding paragraphs (b)(3) and (b)(4) to § 720.75 to read as follows:

§ 720.75 Notice review period.

* * * * *

(b) * * *

(2) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (b)(3) of this section.

(i) *Older notices*. Requests for suspension for premanufacture notices submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) *Newer notices*. For notices submitted on or after [effective date of the final rule], EPA will accept requests for suspension only if submitted in accordance with this paragraph:

(A) Requests for suspension may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based requests for suspension must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(B) Requests for suspension may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All requests for suspension submitted as electronic files on optical disc generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be

used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(C) Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

(3) An oral request for suspension may be granted by EPA for a maximum of 15 days only. Requests for longer suspension must only be submitted in the manner set forth in this paragraph.

(4) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

* * * * *

(e) * * *

(1) A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

(i) *Older notices.* Statements of withdrawal for premanufacture notices submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) *Newer notices.* For notices submitted on or after [effective date of the final rule], EPA will accept statements of withdrawal only if submitted in accordance with this paragraph:

(A) Statements of withdrawal may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based statements of withdrawal must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper statements of withdrawal must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(B) Statements of withdrawal may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All statements of withdrawal submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic statements of withdrawal must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(C) Statements of withdrawal may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such statements of withdrawal must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

* * * * *

8. By revising § 720.80(b)(2)(i) to read as follows:

§ 720.80 General provisions.

* * * * *

(b) * * *

(2) * * *

(i) The notice and attachments must be complete. The submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form, via EPA's e-PMN software. See § 720.40(a)(2)(iv) for how to obtain e-PMN software and CDX reporting instructions.

* * * * *

9. By revising § 720.102(c)(1) introductory text and (d) to read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(c) * * *

(1) The notice must be submitted on EPA Form 7710–56, which is available as part of EPA's e-PMN software. See § 720.40(a)(2)(iv) for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions. The form must be signed and dated by an authorized official. All information specified on the form must be provided. The notice must contain the following information:

* * * * *

(d) *Where to submit.* All notices of commencement must be submitted to EPA on EPA Form 7710–56. Notices may only be submitted in a manner set forth in this paragraph.

(1) *Older notices.* Notices of commencement for premanufacture notices submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(2) *Newer notices.* For premanufacture notices submitted on or after [effective date of the final rule], EPA will accept notices of commencement only if submitted in accordance with this paragraph:

(i) Notices of commencement may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based notices of commencement must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper notices of commencement must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) Notices of commencement may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All notices of commencement submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices of commencement must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(3) Notices of commencement may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

PART 721—[AMENDED]

10. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

11. By revising § 721.25(c) to read as follows:

§ 721.25 Notice requirements and procedures.

* * * * *

(c) EPA will process the notice in accordance with the procedures of part 720 of this chapter except to the extent they are inconsistent with this part.

* * * * *

12. By revising § 721.30(b) introductory text to read as follows:

§ 721.30 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part, unless allowed by 40 CFR 720.40(a)(2)(i), (ii), or (iii), must submit the request to EPA by direct computer-to-computer electronic transfer via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN software in the manner set forth in 40 CFR 720.40(a)(2). See 40 CFR 720.40(a)(2)(v) for how to obtain e-PMN software, CDX reporting instructions, and other associated documents. Support documents related to these requests must be submitted in the manner set forth in 40 CFR 720.40(a)(2)(i), (ii), or (iii). If submitted by paper, requests must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: SNUR Equivalency Determination. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. A request for a determination of equivalency must contain:

* * * * *

PART 723—[AMENDED]

13. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C 2604.

14. By revising § 723.50(e)(1) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

* * * * *

(e) * * *

(1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. Unless allowed as described by § 723.50(e)(1)(i), (e)(1)(ii), or (e)(1)(iii), exemption notices and modifications must be submitted to EPA on EPA Form No. 7710–25 by direct computer-to-computer electronic transfer via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN reporting software in the manner set forth in this paragraph. Support documents related to these notices must also be submitted to EPA via CDX using e-PMN software in the manner set forth in this paragraph. See § 720.40(a)(2)(iv) of this chapter for how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

(i) *Paper-based submissions*—(A) Such notices, and any support documents related to these notices, submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(B) All other notices and related support documents may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based notices must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print EPA Form 7710–25 for submission to EPA. Paper notices must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) *Submissions on optical disc*—(A) Notices may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. Notices submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Persons submitting on optical disc must still complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25 accompanying the optical disc.

(iii) *Submissions via CDX*—(A) As of [effective date of the final rule], notices, and any related support documents, may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software.

(B) By [date 731 days after effective date of the final rule], all notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software and submitted electronically, along with any support documents related to these notices, to EPA via CDX.

(iv) Support documents for notices that are submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

* * * * *

PART 725—[AMENDED]

15. The authority citation for part 725 would continue to read as follows:

Authority: 15 U.S.C 2604, 2607, 2613, and 2625.

16. By revising § 725.25(c), (e)(1), and (e)(2) to read as follows:

§ 725.25 General administrative requirements.

* * * * *

(c) *Where to submit information under this part.* MCANs and exemption requests, and any support documents related to these submissions, may only be submitted in a manner set forth in this paragraph.

(1) *Paper-based submissions.* MCANs and exemption requests, and any support documents related to these submissions, may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based submissions must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the biotechnology notice submission to be sent to EPA. Paper notices must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(2) *Submissions on optical disc*—(i) MCANs and exemption requests may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. MCANs and exemption requests submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency,

OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Persons submitting on optical disc must still prepare, sign and submit on paper, the Certification statement in 40 CFR 725.25(b) along with submitter identification and contact information.

(iii) Support documents for MCANs or exemption requests that are submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(3) *Submissions via CDX.* MCANs and exemption requests, and any related support documents, may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, notices must be generated and completed on EPA Form 6300.07 using e-PMN reporting software.

* * * * *

(e) * * *

(1) A manufacturer or importer may designate an agent to assist in submitting the MCAN. If so, only the manufacturer or importer, and not the agent, signs the certification on the form.

(2) A manufacturer or importer may authorize another person, (e.g., a supplier or a toll manufacturer) to report some of the information required in the MCAN to EPA on its behalf. The manufacturer or importer should indicate in a cover letter accompanying their MCAN which information will be supplied by another person and identify that other person as a joint submitter where indicated in their MCAN. The other person supplying information (i.e., the joint submitter) may submit the information to EPA either in the MCAN or a Letter of Support, except that if the joint submitter is not incorporated, licensed or doing business in the United States, the joint submitter must submit the information to EPA in a Letter of Support only, rather than the MCAN. The joint submitter must indicate in the MCAN or Letter of Support the identity of the manufacturer or importer. Any person who submits the MCAN or Letter of Support for a joint submission must sign and certify the MCAN or Letter of Support.

* * * * *

17. By revising § 725.29(a) to read as follows:

§ 725.29 EPA acknowledgement of receipt of submission.

(a) EPA will acknowledge receipt of each submission via CDX with a computer response via CDX that identifies the number assigned to each MCAN or exemption request and the date on which the review period begins. If the notice or exemption request is submitted on paper or optical disc, in accordance with 40 CFR 725.25(c)(1) or (c)(2), EPA will acknowledge receipt of the notice by sending the submitter a letter that identifies the number assigned to the MCAN or exemption request, and the date on which the review period begins. The review period will begin on the date the MCAN or exemption request is received by the Office of Pollution Prevention and Toxics Document Control Officer, if submitted via paper or optical disc.

* * * * *

18. By adding paragraphs (a)(10) and (a)(11) to § 725.33 to read as follows:

§ 725.33 Incomplete submissions.

(a) * * *

(10) The submitter does not include a unique identifying number and a payment identity number as required by § 700.45(e)(3) of this chapter.

(11) The submitter does not submit the notice in the manner set forth in § 725.25(c).

* * * * *

19. By revising § 725.36(a) to read as follows:

§ 725.36 New information.

(a) During the review period, if a submitter possesses, controls, or knows of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the MCAN or exemption request, the submitter must send that information within 10 days of receiving the new information, but no later than 5 days before the end of the review period. The new information must be sent in the same manner the original notice or exemption was sent, as described in § 725.25(c)(1), (c)(2), and (c)(3).

* * * * *

20. By revising paragraph (b) and adding paragraphs (c) and (d) to § 725.54 to read as follows:

§ 725.54 Suspension of the review period.

* * * * *

(b) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (c) of this section.

(1) *Older notices.* Requests for suspension for notices submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(2) *Newer notices.* For notices submitted on or after [effective date of the final rule], EPA will accept requests for suspension only if submitted in accordance with this paragraph:

(i) Requests for suspension may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based requests for suspension must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) Requests for suspension may be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All requests for suspension submitted as electronic files on optical disc generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(iii) Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) of this chapter for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

(c) An oral request for suspension may be granted by EPA for a maximum of 15 days only. Requests for longer suspension must only be submitted in the manner set forth in this paragraph.

(d) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

21. By revising § 725.60(a) to read as follows:

§ 725.60 Withdrawal of submission by the submitter.

(a) A submitter may withdraw a notice during the notice review period

by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

(1) *Older notices*. Statements of withdrawal for notices submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(2) *Newer notices*. For notices submitted on or after [effective date of the final rule], EPA will accept statements of withdrawal only if submitted in accordance with this paragraph:

(i) Statements of withdrawal may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based statements of withdrawal must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper statements of withdrawal must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) Statements of withdrawal be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All statements of withdrawal submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic statements of withdrawal must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(iii) Statements of withdrawal may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such statements of withdrawal must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) of this chapter for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

* * * * *

22. By revising § 725.67(a)(1) to read as follows:

§ 725.67 Applications to exempt new microorganisms from this part.

(a) * * *

(1) Any manufacturer or importer of a new microorganism may request, under TSCA section 5(h)(4), an exemption, in whole or in part, from this part by sending a Letter of Application in the manner set forth in § 725.25(c).

* * * * *

23. By revising § 725.190(d) to read as follows:

§ 725.190 Notice of commencement of manufacture or import.

* * * * *

(d) *Where to submit*. All notices of commencement must be submitted to EPA in a manner set forth in this paragraph.

(1) *Older notices*. Notices of commencement for a MCAN submitted before [effective date of the final rule] must be submitted on paper to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(2) *Newer notices*. For MCANs submitted on or after [effective date of the final rule], EPA will accept notices of commencement only if submitted in accordance with this paragraph:

(i) Notices of commencement may be submitted on paper until [date 365 days after effective date of the final rule]. All paper-based notices of commencement must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper notices of commencement must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

(ii) Notices of commencement be submitted as electronic files on optical disc until [date 731 days after effective date of the final rule]. All notices of commencement submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices of commencement must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(3) Notices of commencement may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN reporting software. See § 725.25(c)(4) for instructions how to obtain e-PMN software and reporting instructions, and CDX reporting instructions.

24. By revising § 725.975(b) introductory text to read as follows:

§ 725.975 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part, unless allowed by § 725.25(c) (1), (2), or (3), must submit the request to EPA by direct computer-to-computer electronic transfer via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN software in the manner set forth in § 725.25(c). See § 725.25(c)(4) for how to obtain e-PMN software and reporting instructions, and CDX reporting instructions. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. If submitted on paper, requests must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: SNUR Equivalency Determination. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. A request for a determination of equivalency must contain:

* * * * *

25. By revising § 725.984(b)(1) to read as follows:

§ 725.984 Modification or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980 by writing to the Director, or a designee, and stating the basis for such request. The request must be accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part, unless allowed by § 725.25(c)(1), (c)(2), or (c)(3), must submit the request to EPA by direct computer-to-computer electronic transfer via EPA's Central Data

Exchange (CDX) using EPA-provided e-PMN reporting software in the manner set forth in § 725.25(c). See § 725.25(c)(4) for how to obtain the e-PMN software, CDX reporting instructions, and other associated documents. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. Paper requests must be submitted to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: Request to Amend SNUR. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: Request to Amend SNUR.

* * * * *

[FR Doc. E8–30379 Filed 12–19–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0808061071–81575–01]

RIN 0648–AX17

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would limit the harvest of Pacific halibut by guided sport charter vessel anglers in International Pacific Halibut Commission Regulatory Area 2C (Area 2C) of Southeast Alaska to one halibut per day. This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector to approximately the guideline harvest level for Area 2C. The intended effect of this action is to manage the harvest of halibut consistent with an allocation strategy recommended by the North Pacific Management Council for the guided sport charter vessel fishery and the commercial fishery.

DATES: Comments must be received no later than January 21, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX17'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907–586–7356.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC(s regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretaries of State and Commerce, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (March 7, 2008; 73 FR 12280).

The Halibut Act also provides regulatory authority to the North Pacific Fishery Management Council (Council) and the Secretary. The Council, under 16 U.S.C. 773c(c), may develop regulations applicable to U.S. nationals or vessels, which are in addition to, and not in conflict with regulations adopted by the IPHC. The regulations developed by the Council shall only be implemented with the approval of the Secretary, and must meet criteria outlined in section 773c(c), including consistency with 16 U.S.C. 1853(b)(6). The Secretary, under 16 U.S.C. 773c(a) and (b), has the general responsibility to carry out the Convention and Halibut Act. According to section 773c(b), ''In fulfilling [the general responsibility to carry out the Convention and the Halibut Act], the Secretary shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and [the Halibut Act].'' The Secretary's authority to take action under the Halibut Act has been delegated to NMFS.

NMFS takes this action under section 773c(b) to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This action would implement, among other measures, a one halibut daily bag limit on charter vessel anglers in IPHC Area 2C. This bag limit originally was recommended by the Council in June 2007, implemented by NMFS by final rule on May 28, 2008, with an effective date of June 1, 2008 (73 FR 30504). The May 28, 2008, final rule was enjoined by the U.S. District Court for the District of Columbia on June 10, 2008, (see Order Granting Plaintiffs' Motion for a Temporary Restraining Order (TRO), dated June 11, 2008, and Order Granting Plaintiffs' Motion for a Preliminary Injunction (PI), dated June 19, 2008, *Van Valin, et al. v. Gutierrez*, Civil Action No. 1:08–cv–941). NMFS has withdrawn the May 28, 2008, final rule that was challenged in the *Van Valin* lawsuit, and now takes action in a separate rulemaking to implement a one halibut daily bag limit, giving effect to the Council's intent to keep the harvest of charter vessel anglers to approximately the established guideline harvest level (GHL).

In its Order Granting the Plaintiffs' Motion for a Preliminary Injunction, dated June 19, 2007, the U.S. District Court determined that the Plaintiffs had met the burden for granting a preliminary injunction, including demonstrating a likelihood of success

on the merits of their claims. The Plaintiffs argued that NMFS, by referencing the 2003 GHL rule (68 FR 47256, August 8, 2003) in the May 28, 2008, final rule, bound itself to use certain procedures described in the preamble to the 2003 GHL rule, including the requirement that a GHL had to be exceeded in order for management measures to be implemented. NMFS now proposes regulations to specifically repudiate such a ''policy'' and, under sections 773c(a) and (b), proposes new regulations that are necessary to carry out the purposes and objectives of the Convention and the Halibut Act and that will clarify NMFS' regulatory authority.

The preamble to the 1979 Protocol Amending the Convention provides that ''the Convention has served to promote and coordinate scientific studies relating to the halibut fishery of the Northern Pacific Ocean and the Bering Sea, and has aided in the conservation of these fishery resources.'' Management based on the best available science and conservation of the species are purposes and objectives that are familiar to NMFS in its role as resources manager. As such, NMFS proposes regulations to reduce the harvest of halibut by charter vessel anglers to one halibut per calendar day in order to limit the overall harvest of halibut by charter anglers in IPHC Area 2C to approximately the GHL. The GHL in IPHC Area 2C currently is 931,000 lb (422.3 mt).

As stated above, this action by NMFS is consistent with the Council's intent to limit the catch to the GHL. As recently as October 2008, when the Council was taking final action on the Catch Sharing Plan (CSP) for halibut between the charter and commercial sectors in IPHC Areas 2C and 3A, the Council reaffirmed its intent for a one halibut bag limit in IPHC Area 2C in order to limit the harvest of halibut by charter anglers in IPHC Area 2C to approximately the GHL. This intent was further confirmed in a letter from Chris Oliver, Executive Director, Council, to Dr. Bruce Leaman, Executive Director, IPHC. The letter, which was informing the IPHC that the Council approved a catch sharing plan for the guided sport and commercial halibut fisheries in IPHC Areas 2C and 3A, also provided that ''[t]he Council reiterated its support of its previous recommendation for a one–fish bag limit in Area 2C.'' It is important to note that management under the Council–approved CSP, if approved by NMFS, would require a one halibut daily bag limit under current halibut abundance levels. Therefore, a one halibut daily bag limit is consistent with the past management recommendation and the future management proposal of the Council.

This action by NMFS is also consistent with its authority under 16 U.S.C. 773c(a) and (b) to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This action addresses conservation of the resource, by restricting catch to approximately the GHL, so that the IPHC's projected harvest of halibut by charter anglers, which is assumed by the IPHC to equal the GHL, adequately reflects actual catches for purposes of managing sustainable removals of the halibut resource. This action also addresses an allocation of halibut fishing privileges among various U.S. fishermen, by giving effect to a Council recommendation on how to assign such privileges consistent with the criteria found in section 773c(c).

Management of the Halibut Fisheries

The harvest of halibut occurs in three basic fisheries(the commercial, sport, and subsistence fisheries. Additional fishing mortality occurs as bycatch, incidental catch, research catch, and wastage. Charter fishing for halibut in Alaska is managed as part of the sport fishery.

Based on a coastwide population model, the IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems in all areas of Convention waters. In areas in and off of Alaska, the IPHC currently imposes catch limits only on the commercial sector. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The IPHC subtracts estimates of all non–commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the (fishery CEY(for an area(s directed commercial fixed gear fishery.

This method of determining the commercial fishery(s catch limit in an area results in a decrease in the commercial fishery(s use of the resource as other non–commercial uses increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non–commercial uses of the resource have remained relatively stable and small. Although most of the non–commercial uses of halibut have been relatively stable, growth in the guided sport charter vessel fishery in recent years, particularly in Area 2C, has resulted in the guided sport charter vessel fishery harvesting a larger amount of halibut, thereby reducing the amount available to the commercial fishery.

Guideline Harvest Level (GHL)

The guideline harvest level for Area 2C serves as a benchmark for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GHL does not limit the charter vessel fisheries. Although it is the Council(s policy that the charter vessel fisheries should not exceed the GHLs, the GHL in Area 2C has been exceeded each year since 2004. Charter removals should be close to the GHL or the overall harvest strategy of the IPHC is undermined, creating a conservation concern and resulting in a *de facto* reallocation from the commercial sector.

From 2003–2007, the GHL for Area 2C was 1.432 million lb. In 2008, the IPHC reduced the CEY to 6.5 million lb (2,948.4 mt) from the 2007 CEY of 10.8 million lb (4,899.0 mt). This was a reduction of 4.3 million lb (1,950.4 mt) from the 2007 CEY. The reduction in the CEY triggered a reduction of the Area 2C GHL from 1.432 million lb (649.5 mt) to 931,000 lb (422.3 mt) for 2008.

Recent Harvests of Halibut in Area 2C

In Area 2C, the commercial, sport, and other harvest of halibut over the past 11 years (1997 through 2007) has been estimated by the IPHC to average about 12.215 million lb (5,540.6 mt) per year. Of this annual average total removal from the halibut resource, the commercial fishery accounts for about 75.9 percent, the sport fishery (guided and unguided combined) accounts for about 19.6 percent, and the remaining 4.5 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut were made based on surveys conducted by the Alaska Department of Fish and Game (ADF&G)

during the past three years and average about 600,000 lb (272.2 mt) per year.

In the most recent three years (2005 through 2007), the average annual total halibut removals in Area 2C is 13.342 million lb (6,051.8 mt) of which the commercial fishery has taken about 73 percent, the sport fishery has taken about 21 percent, and about 6 percent is from other sources of halibut mortality. The commercial fishery is the primary user of the halibut resource in Area 2C followed by the sport fishery, which together account for over 90 percent of the total removals from the halibut resource.

In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. Residents of Southeast Alaska and their family and friends are the primary unguided anglers, while non–resident tourists are the main clients for guided fishing on charter vessels. Sport harvest data collected by ADF&G show that the 1995 through 2007 average guided sport harvest of halibut has been 1.398 million lb (634.1 mt) per year and the unguided sport harvest of halibut has averaged 0.928 million lb (420.9 mt) per year. Guided charter vessel harvest averaged about 60 percent of all sport caught halibut landed in Southeast Alaska over this 13-year period. The guided sport harvest has increased its proportion of the sport harvest in recent years. From 2002 through 2007, the annual guided sport charter vessel harvest averaged 64.6 percent of the total sport harvest of halibut in Area 2C, and in 2005 reached a record 71.4 percent of the total sport harvest (Table 1).

Currently, the federal harvest restrictions implemented to reduce charter vessel harvest of halibut in Area 2C include the following:

- Halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head–on length of no more than 32 inches (81.3 cm).
- If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

In addition, the nonguided sport fishery for halibut is limited to a two halibut daily bag limit with no size restriction on either fish. Under these restrictions, the total Area 2C harvest of halibut by the sport fishery in 2007 was 3.049 million lb (1,383.0 mt), based on final ADF&G sport harvest estimates reported in September 2008. Of this amount, the charter fishery harvested 1.918 million lb (870.0 mt) or 63 percent and the unguided harvest was 1.131 million lb (513.0 mt) or 37 percent. Charter harvest exceeded the 2007 Area 2C GHL of 1.432 million lb by 486,000 lb (220.4 mt) or 34 percent (Table 1). Harvest estimates are not yet available for 2008. Assuming similar harvest patterns in 2008 as in 2007, the charter vessel harvest may be near double the 2008 GHL of 931,000 lb (422.3 mt).

TABLE 1. GUIDED AND UNGUIDED SPORT HARVEST BY YEAR IN AREA 2C IN MILLIONS OF POUNDS (MLB) AND AS A PERCENTAGE OF EACH YEAR'S GHL

Year	GHL (Mlb)	Unguided Sport Harvest (Mlb)	Charter Harvest (Mlb)	Total Sport Harvest (Mlb)	Charter harvest as percentage of GHL	Charter harvest as percentage of total sport harvest
2002	n/a	0.814	1.275	2.089	n/a	61.0 %
2003	1.432	0.846	1.412	2.258	98.6 %	62.5 %
2004	1.432	1.187	1.750	2.937	122.2 %	59.6 %
2005	1.432	0.845	1.952	2.797	136.3 %	69.8 %
2006	1.432	0.723	1.804	2.527	126.0 %	71.4 %
2007	1.432	1.131	1.918	3.049	133.9 %	62.9 %
2008	0.931	1.131*	1.918*	n/a	206.0 %	n/a

*based on estimate of similar harvest rates as 2007

Proposed Action

Consistent with a recommendation by the Council in June 2007, this action proposes the following management measures to reduce the charter vessel fishery harvest of halibut in Area 2C to approximately the GHL of 931,000 lb (422.3 mt). If implemented, the proposed regulations would remain in effect until changed by a new federal regulatory action.

- The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day;
- A charter vessel guide, a charter vessel operator, and crew of a charter vessel must not catch and retain halibut during a charter fishing trip; and
- The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less.

One–fish daily bag limit. This restriction would substitute a daily catch limit for a charter vessel angler of one halibut per day of any size for the existing daily catch limit of two halibut per day with one of the two fish less than 32 inches (81.3 cm) in length. This is the only management option analyzed that is expected to reduce charter vessel harvest to the GHL of 931,000 lb. In conjunction with the proposed restrictions on harvest by skipper and crew and line limits, the one–fish daily bag limit is estimated to reduce the charter vessel harvest to a range of 129 percent to 161 percent of the current Area 2C GHL. The one–fish daily bag limit is not expected to reduce charter harvest to below the current GHL without a concurrent reduction in client demand for charter trips.

No harvest by skipper and crew. A new Federal restriction is proposed prohibiting the harvest of halibut by a charter vessel guide, a charter vessel operator, and a charter vessel crew member during a charter vessel fishing trip. The language of the June 2007 Council(s motion adopting this recommendation reads, (no harvest by skipper and crew when clients are on

board the charter vessel.(Although a sport fishing guide on a charter vessel in Area 2C is likely to be the same person as the (skipper,(captain, or operator of the vessel, in some cases the skipper and guide could be different persons. Hence, this proposed rule makes clear the Council(s intent of applying this restriction to all persons(guide, skipper or operator, and crew(involved with the delivery of onboard services to the charter vessel angler.

The proposed regulation deviates from the Council(s adopted motion language also in that the phrase (when clients are on board(is not used in the proposed regulation. Instead, the proposed regulation would limit the skipper and crew harvesting prohibition to a charter vessel fishing trip. A new definition is proposed in this action for (charter vessel fishing trip(which describes the period from the first deployment of fishing gear from a charter vessel until the offloading of any charter vessel angler or halibut. Also, an existing definition of (charter vessel((at § 300.61) describes such a vessel as one (used for hire in sport fishing for halibut, but not including a vessel without a hired operator.(Hence, the effect of the proposed regulation would be the same as that intended by the Council, which is to prohibit retention of halibut caught by the guide, skipper, and crew on a charter vessel, but not to impose this restriction when no clients or charter vessel anglers are onboard. A vessel without clients or paying anglers onboard is, by definition, not a charter vessel. Therefore, guides, skippers, and crew would not be prevented from sport fishing for halibut for themselves when they are not on a charter vessel fishing trip.

The Council recommended this restriction to make it more specific to halibut harvest on charter vessels in Area 2C. The State Commissioner of the ADF&G (Commissioner) issued an emergency order prohibiting the retention of all fish by the skipper and crew of a charter vessel in Area 2C in 2007. The Commissioner could not make his emergency order apply only to halibut because the State of Alaska is not authorized to directly regulate halibut fishing. A comprehensive application of the emergency order to all fish effectively prevented charter vessel skippers and crews from harvest of salmon, rockfish, lingcod, and other species. Charter vessel operators requested relief from this comprehensive prohibition on skipper and crew harvests by having a Federal prohibition on skipper and crew harvest apply only to halibut. Assuming that the Commissioner does not issue an emergency order prohibiting skipper crew and harvest, this action would relieve charter vessel skippers and crew from the more comprehensive prohibition against retention of all fish on charter vessels but would impose this prohibition on the retention of halibut.

Line limits. A new Federal restriction is proposed that would limit the number of lines that could be fished from a charter vessel to six or the number of charter vessel anglers onboard the charter vessel, whichever is less. The existing IPHC gear limitation for a person sport fishing for halibut is a single line with no more than two hooks attached, or a spear (IPHC regulation, section 25(1) at 73 FR 12289). Hence, this restriction would prevent more than six charter vessel anglers on a vessel from fishing at the same time. This restriction is reasonable, however, because the charter vessels and charter vessel skippers in Southeast Alaska (Area 2C) typically are licensed by the U.S. Coast Guard to carry no more than six passengers. In addition, existing State of Alaska regulations (at 5 AAC 47.030(b)) limit the number of lines fished from a charter vessel generally to the number of clients onboard the vessel. A six–line limit for Area 2C has been in Alaska regulations since 1983, and limiting the number of lines fished to the number of clients onboard has been a requirement since 1997. The proposed line limits in Federal regulations would be specifically for halibut fishing.

Remove carcass retention provision. NMFS proposes to remove existing requirements for the retention of halibut carcasses. To help enforce the two–fish daily bag limit with size restrictions that went into place in Area 2C in 2007, NMFS prohibited mutilating or otherwise disfiguring a halibut carcass such that the head–on length could not be determined. This requirement to retain carcasses would no longer be necessary with a one–fish daily bag limit and would be removed from regulations at § 300.66(m). The IPHC adopted new standards in 2008 that were published in the annual management measures on March 7, 2008 (73 FR 12280). The new IPHC requirement for Alaska is: ''no person shall possess onboard a fishing vessel, including charter vessels and pleasure craft, halibut that have been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than two ventral and two dorsal pieces, and two cheeks, all with skin on.'' This change allows enforcement officers to count the number of fish in possession by an angler, and is not addressed as a provision of this proposed rule.

Other proposed changes. NMFS proposes changes to § 300.65(c)(2) and (3) to clarify its authority to limit charter angler harvest to the GHL. Recent litigation highlighted that these regulations must be changed to clarify that NMFS has the authority to take action at any time to limit the charter angler catch to the GHL. A new prohibition (p) would be added to § 300.66 to ensure that charter vessel operators, guides, anglers, and crew members provide necessary documentation upon the request of an authorized officer. This documentation may include valid identification, U.S. Coast Guard operator's license, permit, ADF&G sport fishing license, or ADF&G Saltwater Sport Fishing Charter Trip Logbook.

One definition is proposed to be revised (guideline harvest level) and seven definitions are proposed to be added (Area 3A, charter vessel angler, charter vessel fishing trip, charter vessel guide, charter vessel operator, crew member, and sport fishing guide services) to define guided sport fishing activities and are intended to clarify who may and may not catch and retain halibut and who is responsible for recordkeeping and reporting requirements in § 300.65(d).

Recordkeeping and Reporting

Charter vessel operators would use the ADF&G Saltwater Sport Fishing Charter Trip Logbook to record the information needed to enforce the proposed one–fish daily bag limit. Logbook data sheets would be required to be submitted to the appropriate ADF&G office according to the time schedule described in the instructions at the beginning of the logbook.

The following recordkeeping and recording information would be required to enforce this proposed rule: charter vessel business owner license number, charter vessel guide license number, date, regulatory area fished, angler sport fishing license number and printed name, number of halibut retained, charter vessel guide signature, and charter vessel angler signature. Additionally, for charter vessels fishing for halibut in both Areas 2C and 3A in a single trip, separate logbook data sheets would be required for each area if halibut are caught and retained.

Charter vessel guides would continue to be required to complete the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook and charter vessel anglers would sign the logbook at the end of a fishing trip to

acknowledge that the angler–specific information recorded is correct. These collection–of–information requirements were reviewed under the Paperwork Reduction Act (PRA) and were approved by the Office of Management and Budget under Control Number 0648–0575.

Potential Future Management Actions

This proposed action is intended to reduce charter vessel harvests of halibut to close to the GHL until a longer–term solution can be reached. Since the Council made its recommendation in June 2007, it subsequently adopted two additional management programs for the charter fishery in Areas 2C and 3A. The first program would implement a limited entry program for charter vessel businesses and associated vessels. The second program, the CSP, would implement new target harvest objectives for the charter fishery and associated management measures. It is important to note that management under the Council–approved CSP, if approved by NMFS, would require a one–fish bag limit under current halibut abundance levels. NMFS has not yet published a proposed rule for public review and comment for either of these proposed programs.

Classification

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are discussed in the preamble above. The proposed action would implement a one–fish daily bag limit for the charter vessel halibut fishery in Area 2C. A summary of the analysis follows.

In 2007, 403 businesses operated 724 active charter vessels in Area 2C. All of these operations are assumed to be small entities, with annual gross revenues of less than the limit of $7.0 million used to differentiate between large and small charter operations. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an assortment of visitor activities, may be large entities under the Small Business Administration size standard, but it is also possible that all the entities involved in the charter vessel halibut of harvest have grossed less than this amount. The number of small entities may be overestimated because of the limited information on vessel ownership and operator revenues and operational affiliations. However, it is likely that nearly all entities qualify as small businesses and for purposes of this analysis, all entities were assumed to be small entities.

This analysis examined two alternatives, the status quo and the preferred alternative. The objective of this action is to reduce the guided sport harvest to approximately the GHL. The status quo alternative was introduced in 2007 with the intent of reducing halibut harvest in the charter vessel sector while minimizing negative impacts on the charter vessel sector, its sport fishing clients, and the coastal communities that serve as home ports for the charter vessel sector. The status quo would retain the two–fish bag limit with one of the two fish less than or equal to 32 inches (83.1 cm) in length, without changes. Under the status quo, both the number of charter customers and the volume of fish harvested rose to their highest recorded levels. In 2007, the GHL was 1.432 Mlb. Since that time reductions in the Total CEY in Area 2C have led to a reduction in the GHL to 0.931 Mlb. The 2007 harvest was more than double this GHL and is not expected to decline if the bag limit remains the same. Thus, the status quo would not achieve the objective of this action.

Seven management measures, combined into 11 specific options, were considered for this analysis, but were ultimately rejected without being subjected to detailed analysis. These measures were analyzed for the final rule published by the Secretary on May 28, 2008 (73 FR 30504), but prevented from taking effect in 2008 by the Federal Court's injunction. These alternatives were thoroughly analyzed at that time, and were rejected by the Council and Secretary for a number of reasons; primarily because none of these alternatives would reduce the guided charter halibut harvest to approximately the GHL. Additional reasons for rejecting these alternatives included 1) the economic effect of an option falling on too few businesses; 2) the option being easily diluted by changes in angler behavior; and 3) the difficulty in measuring large fish before bringing them onboard vessels.

The preferred alternative would implement a one–fish daily bag limit for charter vessel anglers, a prohibition on harvest by charter vessel guides, operators, and crew, and a maximum six–line limit. A range of harvest results are possible under the preferred alternative. At current demand levels it is estimated to reduce the harvest in the guided sport fishery to between 129 percent and 161 percent of the 0.931 Mlb GHL, and, under certain assumptions outlined in the analysis about changes in demand, it may reduce the harvest to the GHL. Thus, this alternative is capable of achieving the objective of this action. Although the status quo would have a smaller impact on directly regulated small entities, it would not achieve the objectives of this action. The preferred alternative would minimize the impacts on small entities and best meet the management objective of restricting the charter vessel harvest of halibut to as close to the GHL as management measures will allow. NMFS earlier considered additional alternatives to achieve the objectives of this action in 2007 and 2008. These alternatives were analyzed in the April 2008 Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut Commission Regulatory Area 2C (see **ADDRESSES** for availability). This earlier analysis found that only the preferred alternative, the one–halibut bag limit, was capable of achieving the objectives of this action. The current analysis reached a similar conclusion.

Collection of Information

The proposed action imposes new recordkeeping and reporting requirements on the directly regulated small entities. The Council, NMFS, and ADF&G stressed the importance of minimizing reporting burden on the charter vessel industry and developed a proposed information collection program that would allow for the recording of necessary information in the existing ADF&G Saltwater Sport Fishing Charter Trip Logbook (logbook).

The new logbook information that would be required to be provided for this proposed action includes the regulatory area in which halibut were caught and kept during the fishing trip, the printed name of the charter vessel angler, including youth anglers under 16 years of age, and the signature of the angler on the back of the logbook sheet to verify that the number of halibut caught and recorded is accurate.

As currently required by the State, the charter vessel guide also would be required under the proposed regulations to provide 1) the business license number issued by ADF&G, 2) the charter vessel guide license number issued by ADF&G, 3) the date the charter vessel

fishing trip was taken, 4) the Alaska Sport Fishing License number of each charter vessel angler, and 5) the number of halibut retained. At the end of each fishing trip, each charter vessel guide would be required to acknowledge that the information recorded in the logbook is correct by signing the logbook data sheet.

This collection of information requirement is subject to the Paperwork Reduction Act (PRA) and has been approved by OMB under Control Number 0648–0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response. The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden for this collection is estimated at 3,134 hours. The professional skill that is necessary for each charter vessel guide to record the required logbook information vessel is the ability to read and write in English.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) 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 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 proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Halibut Act

NMFS, through delegated authority from the Secretary of Commerce, is proposing this action under 16 U.S.C. 773c(a) and (b). This statutory provision provides NMFS with the general responsibility to carry out the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea, signed at Ottawa, Canada on March 2, 1953, as amended by the Protocol Amending the Convention, signed at Washington March 29, 1979 (Convention), and the Northern Pacific Halibut Act of 1982 (Halibut Act), and the authority to adopt such regulations as may be necessary to carry out the purposes and goals of the Convention and the Halibut Act.

According to the legislative history of the Halibut Act (Public Law 97–176, 1982 U.S. Code Cong. and Adm. News, p. 108), the purpose of the Halibut Act ''is to amend U.S. law so that it will conform with the agreements made by the United States with Canada concerning the halibut fishery of the Northern Pacific Ocean and Bering Sea.''

The agreements made by the United States with Canada are integrated into the Convention. The Convention provides that:

> Nationals and fishing vessels of, and fishing vessels licensed by, Canada or the United States may fish for halibut in Convention waters only in accordance with this Convention, including its Annex, and as provided by the International Pacific Halibut Commission in regulations promulgated pursuant to Article III of the Convention and designed to develop stocks of halibut in Convention waters to those levels which permit the optimum yield from the fishery and to maintain the stocks at those levels. However, it is understood that nothing contained in this convention shall prohibit either party from establishing additional regulations, applicable to its own nationals and fishing vessels, and to fishing licensed by that party, governing the taking of halibut which are more restrictive than those adopted by the International Pacific Halibut Commission.

Convention waters are defined as:

> [T]he waters off the west coasts of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For purposes of this Convention, the ''maritime area'' in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of the Party.

As outlined above, one of the Convention's primary purposes and goals is ''to develop stocks of halibut in Convention waters to those levels which permit the optimum yield from the fishery and to maintain the stocks at those levels.'' This overarching purpose and goal is the primary concern of NMFS for this fishery. Optimum yield for a fishery is designed to provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and is proscribed as such on the basis of the maximum sustainable yield from that fishery, as reduced by any relevant economic, social, or ecological factors.

At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for charter vessel anglers in Area 2C from two halibut to one halibut during certain time periods (June 15 – July 30) because it believed its management goals were at risk by the magnitude of charter halibut harvest in excess of the GHL. At that time, the IPHC had information that the GHL had been exceeded in 2004 and 2005, and most likely had been exceeded in 2006. The IPHC took this action reluctantly, indicating that its preference would be for domestic agencies to resolve allocation issues. The IPHC delayed the effective date of the reduced bag limit to afford NMFS time to resolve the issue under U.S. domestic law with regulations that would achieve ''comparable reductions'' in halibut harvest by charter vessel anglers in Area 2C.

In order to have an effective action in 2007, NMFS took action under section 773c(a) and (b), independent of the Council process. Rather than imposing a one halibut limit for certain portions of the season, as proposed by the IPHC, NMFS employed other management measures (daily bag limit of one halibut of any size and one halibut 32 inches or less) it determined would reduce sport fishing mortality of halibut to a level comparable to the level that would have been achieved by the proposed IPHC regulations. Note that this was not the same as reducing the catch to the GHL, which would have required more restrictive measures. Regulations implementing the above management measures were published on June 4, 2007 (72 FR 30714).

During the first half of 2007, the Council also was considering management alternatives for the charter vessel halibut fishery in Area 2C. Unlike the IPHC and NMFS actions, however, the Council's action was designed specifically to maintain the charter vessel fishery to its GHL.

Section 773c(c) of the Halibut Act provides that ''[t]he Regional Fishery Management Council having authority for the geographical area concerned [in this case the North Pacific Fishery Management Council] may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted

by the [International Pacific Halibut] Commission.''

The Council, through its authority under section 773c(c), developed regulations in June 2007 to limit the harvest of charter vessel anglers to the Area 2C GHL specified at 50 CFR 300.65(c). At that time, the Area 2C GHL was at 1.432 Mlb (649.5 mt); however, the Council was provided information that halibut biomass reductions might reduce the Area 2C GHL in 2008. Given the information that the GHL might be reduced, the Council proposed two options, one option if the Area 2C GHL remained at 1.432 Mlb (649.5 mt), and one option if the Area 2C GHL was reduced. NMFS published a proposed rule with those two options on December 31, 2007.

At the time the Council took action in June 2007, it was aware that charter anglers had exceeded the Area 2C GHL in 2004 (22 percent) and 2005 (36 percent), and preliminary estimates indicated that the 2006 Area 2C GHL also would be exceeded. Information provided to the Council in October 2007 indicated that the 2006 Area 2C GHL was exceeded by 26.5 percent.

In January 2008, the IPHC established a constant exploitation yield (CEY) that reduced the GHL to 0.931 Mlb (422.3 mt). This information led NMFS to publish a final rule on May 28, 2008 (73 FR 30504), with Option B, the option that was recommended by the Council and proposed by NMFS if the GHL was reduced. The final rule implemented a one halibut daily bag limit along with several other measures, including no harvest of halibut by skippers and crew on a charter vessel and line limits. Given the 2008 GHL, no other management measures analyzed by the Council would have reduced the projected charter anglers overall catch to the GHL.

As indicated earlier in this preamble, the May 28, 2008, final rule was enjoined by the U.S. District Court for the District of Columbia on June 10, 2008. The full basis for the lawsuit (*Van Valin, et al. v. Gutierrez*, Civil Action No. 1:08–cv–941) and the injunctive relief provided by the U.S. District Court is a matter of public record and will not be repeated here. However, one important aspect of the lawsuit is clarified by this proposed rule.

In *Van Valin*, the Plaintiffs argued that NMFS did not have the authority to impose certain management measures because it did not follow a procedure as outlined in the preamble to the 2003 GHL rule. According to the Plaintiffs, NMFS could not impose management measures to manage the charter sector to the GHL until that GHL was exceeded. This would be true even if previous GHLs had been exceeded, and the GHL in place at the time of action was less than the previous exceeded GHLs (as was the case in 2008). Although the result the Plaintiffs advocated could be read into the rulemaking discussion found in the preamble to the 2003 GHL rule, NMFS believes that such a result would be counter to its responsibility to manage the halibut resource based on the best present, as well as past, information. As such, NMFS specifically repudiates that policy and proposes changes to the regulations to clarify NMFS' authority to take actions that are necessary to carry out the purposes and objectives of the Convention and the Halibut Act.

NMFS withdrew the May 28, 2008, rule on September 11, 2008 (73 FR 52795), to ensure that any confusion that may have occurred because of the May 28, 2008, rule's perceived connection to the statements made in the preamble to the 2003 GHL rule is eliminated and to establish a new record and rationale for action under this proposed rule. An analysis was prepared for this action that analyzes the necessity of taking this action, the purposes of this action, and the alternatives evaluated to achieve those purposes. NMFS considered this analysis, as well as the Council's continued support for its June 2007 recommendation, as evidenced by its actions and intent at its October 2008 meeting, the impacts of potential future actions, such as the Catch Sharing Plan for Areas 2C and 3A and moratorium on halibut charter businesses recommended by the Council, and statements provided by staff of the Commission concerning halibut stock management, in proposing this rule.

Executive Order 12962

This proposed action is consistent with E.O. 12962 which directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities (to the extent permitted by law and where practicable.(This E.O. does not diminish NMFS(responsibility to address allocation issues, nor does it require NMFS or the Council to limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries. This proposed rule does not diminish that productivity or countermand the intent of E.O. 12962.

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Treaties.

Dated: December 16, 2008.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300——INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.61, add definitions in alphabetical order for ''Area 3A'', ''Charter vessel angler'', ''Charter vessel fishing trip'', ''Charter vessel guide'', ''Charter vessel operator'', ''Crew member'', and ''Sport fishing guide services'', and revise the definition for ''Guideline harvest level (GHL)'' to read as follows:

§ 300.61 Definitions.

* * * * *

Area 3A means all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true.

* * * * *

Charter vessel angler, for purposes of § 300.65(d), means a person, paying or nonpaying, using the services of a charter vessel guide.

Charter vessel fishing trip, for purposes of § 300.65(d), means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.

Charter vessel guide, for purposes of § 300.65(d), means a person who is required to have an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

Charter vessel operator, for purposes of § 300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

* * * * *

Crew member, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

* * * * *

Guideline harvest level (GHL) means the level of allowable halibut harvest by the charter vessel fishery.

* * * * *

Sport fishing guide services, for purposes of § 300.65(d), means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

* * * * *

3. In § 300.65, revise paragraphs (c)(2) and (3) and paragraph (d) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(c) * * *

(2) NMFS will publish a notice in the **Federal Register** on an annual basis announcing the GHL based on the table in paragraph (c)(1) of this section for Area 2C and Area 3A for that calendar year after the Commission establishes the constant exploitation yield for that year.

(3) The announced GHLs for Area 2C and 3A are intended to be the benchmarks for charter halibut harvest in those areas for the year in which it is announced pursuant to paragraph (c)(2) of this section. NMFS may take action at any time to limit the charter halibut harvest to as close to the GHL as practicable.

(d) *Charter vessels in Area 2C and Area 3A*—(1) *General requirements*—(i) *Logbook submission.* Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the Alaska Department of Fish and Game, Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518–1599, and postmarked no more than seven calendar days after the end of a charter vessel fishing trip.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The employer of the charter vessel guide is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Charter vessels in Area 2C*—(i) *Daily bag limit.* The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(ii) *Charter vessel guide and crew restriction.* A charter vessel guide, a charter vessel operator, and any crew member of a charter vessel must not catch and retain halibut during a charter fishing trip.

(iii) *Line limit.* The number of lines used to fish for halibut onboard a vessel must not exceed six or the number of charter vessel anglers, whichever is less.

(iv) *Recordkeeping and reporting requirements in Area 2C.* Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(2)(iv)(A) and (B) of this section):

(A) *Charter vessel angler signature requirement.* At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the back of the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler's information on the front of the logbook data sheet.

(B) *Charter vessel guide requirements.* For each charter vessel fishing trip in Area 2C, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)(*1*) through (*8*) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(*1*) *Business owner license number.* The sport fishing operator business license number issued by the Alaska Department of Fish and Game to the charter vessel guide or the charter vessel guide's employer.

(*2*) *Guide license number.* The Alaska Department of Fish and Game sport fishing guide license number held by charter vessel guide who certified the logbook data sheet.

(*3*) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip.

(*4*) *Regulatory area fished.* Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

(*5*) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler onboard that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.

(*6*) *Number of halibut retained.* For each charter vessel angler, record the number of halibut caught and retained during the charter vessel fishing trip.

(*7*) *Signature.* At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.

(*8*) *Angler signature.* The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.

(3) *Charter vessels in Area 3A.* For each charter vessel fishing trip in Area 3A, the charter vessel guide must record the regulatory area (Area 2C or Area 3A) where halibut were caught and retained by circling the appropriate area in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

* * * * *

4. In § 300.66, revise paragraph (m) and add paragraphs (o), (p), and (q) to read as follows:

§ 300.66 Prohibitions.

* * * * *

(m) Exceed any of the harvest or gear limitations specified at § 300.65(d).

* * * * *

(o) Fail to comply with the requirements at § 300.65(d).

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application or statement required under § 300.65.

(q) Refuse to present valid identification, U.S. Coast Guard operator's license, permit, license, or Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip logbook upon the request of an authorized officer.

[FR Doc. E8–30376 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 246

Monday, December 22, 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

Agricultural Marketing Service

[Docket # AMS–FV–08–0079]

United States Standards for Grades of Bunched Carrots

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Bunched Carrots. AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in fostering commerce. As a result, AMS has identified the United States Standards for Grades of Bunched Carrots for possible revisions. AMS is proposing to revise the color requirement to allow bunched carrots of any color characteristic of the variety to be graded using the standards. In addition, the similar varietal characteristic requirement would be amended to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack. Also, AMS is considering removing the ''Unclassified'' category from the standards. AMS is seeking comments regarding this change as well as any other possible revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 20, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361–1184. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Newell, Standardization and Training Section, Fresh Products Branch, (540) 361–1120. The United States Standards for Grades of Bunched Carrots are available by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/freshinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is considering revisions to the voluntary United States Standards for Grades of Bunched Carrots using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on September 18, 1954.

Background

AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Bunched Carrots for possible revision. Prior to undertaking detailed work developing the proposed revisions in the standards, AMS is soliciting comments on the proposed revision and any other comments regarding revisions to the United States Standards for Grades of Bunched Carrots to better serve the industry.

The current standard only applies to bunched carrots of orange, orange red or orange scarlet color. AMS would revise the color requirement to allow bunched carrots of any color characteristic of the variety to be graded using the standard. In addition, AMS would amend the similar varietal characteristic requirement to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack.

AMS would also eliminate the ''Unclassified'' category. AMS is removing this section in all standards as they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary due to current marketing practices.

This notice provides for a 60-day comment period for interested parties to comment on the revision to the United States Standards for Grades of Bunched Carrots. Should AMS proceed with the revisions, it will develop the proposed revised standards that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30276 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–FV–08–0080]

United States Standards for Grades of Carrots With Short Trimmed Tops

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Carrots with Short Trimmed Tops. AMS has been reviewing the Fresh Fruit and Vegetable

grade standards for usefulness in fostering commerce. As a result, AMS has identified the United States Standards for Grades of Carrots with Short Trimmed Tops for possible revisions. AMS is proposing to revise the color requirement to allow carrots with short trimmed tops of any color characteristic of the variety to be graded using the standards. In addition, the similar varietal characteristic requirement would be amended to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack. Also, AMS is considering removing the ''Unclassified'' category from the standards. AMS is seeking comments regarding this change as well as any other possible revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 20, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361–1184. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Newell, Standardization and Training Section, Fresh Products Branch, (540) 361–1120. The United States Standards for Grades of Carrots with Short Trimmed Tops are available by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/freshinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is considering revisions to the voluntary United States Standards for Grades of Carrots with Short Trimmed Tops using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on September 18, 1954.

Background

AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Carrots with Short Trimmed Tops for possible revision. Prior to undertaking detailed work developing the proposed revisions in the standards, AMS is soliciting comments on the proposed revision and any other comments regarding revisions to the United States Standards for Grades of Carrots with Short Trimmed Tops to better serve the industry.

The current standard only applies to carrots with short trimmed tops of orange, orange red or orange scarlet color. AMS would revise the color requirement to allow carrots with short trimmed tops of any color characteristic of the variety to be graded using the standard. In addition, AMS would amend the similar varietal characteristic requirement to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack.

AMS would also eliminate the ''Unclassified'' category. AMS is removing this section in all standards as they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary due to current marketing practices.

This notice provides for a 60-day comment period for interested parties to comment on the revision to the United States Standards for Grades of Carrots with Short Trimmed Tops. Should AMS proceed with the revisions, it will develop the proposed revised standards that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30312 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–08–0084; FV–08–331]

United States Standards for Grades of Frozen Blueberries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), of the United States Department of Agriculture (USDA) prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on the petition to revise the United States Standards for Grades of Frozen Blueberries. AMS received a petition from blueberry producers asking USDA to consider revising the current U.S. grade standard.

DATES: Comments must be submitted on or before February 20, 2009.

ADDRESSES: Written comments may be mailed to Brian E. Griffin, Inspection and Standardization Section, Processed Products Branch (PPB), Fruit and Vegetable Programs (FV), AMS, USDA, 1400 Independence Avenue, SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; fax: (202) 690–1527; or Internet: *http://www.regulations.gov.* The United States Standards for Grades of Frozen Blueberries are available either through the address cited above or by accessing the AMS Web site on the Internet at *http://www.ams.usda.gov/processedinspection.* All comments should reference the docket number, date, and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet via *http://www.regulations.gov.* Comments will be made available for public inspection at the above address during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian E. Griffin, Inspection and Standardization Section, USDA, AMS, FV, PPB. Telephone: (202) 720–5021 or (202) 720–4693.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and

demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Some of these United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs. AMS is requesting comments on revising the U.S. Standards for Grades of Frozen Blueberries using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Background

AMS received a petition from the North American Blueberry Council, an association of blueberry producers, requesting the revision of the United States Standards for Grades of Frozen Blueberries. These standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

The petitioners are requesting the USDA to revise the terminology employed in connection with the product description of frozen blueberries. The current grade standards, effective since May 22, 1957, state that frozen blueberries are prepared from sound, properly ripened fresh fruit of the blueberry bush (Genus Vaccinium), including species or varieties often called huckleberries, but not of the Genus Gaylussacia. To more narrowly define the term blueberry, the petitioners are requesting that the new proposed standard employ the following terms:

''Frozen blueberries are prepared from the sound, properly ripened fresh fruit of the species *Vaccinium corymbosum, V. virgatum* (*syn. V. ashei*), *V. angustifolium,* and *V. myrtilloides* (some common names: highbush, cultivated, wild, lowbush, southern highbush, rabbiteye), including species and cultivars often called huckleberries, but not of the genus Gaylussacia.'' A copy of the petitioners' request is located at *http://www.regulations.gov.*

Prior to undertaking research and other work associated with revising the grade standards, AMS is soliciting comments on the petition requesting the revision of the U.S. Standards for Grades of Frozen Blueberries. In particular, AMS would welcome comments and information regarding the likely utility of revised terminology to include *Vaccinium corymbosum, V. virgatum* (*syn. V. ashei*), *V. angustifolium,* and *V. myrtilloides.* Some common names: Highbush, cultivated, wild, lowbush, southern highbush, and rabbiteye, and the probable impact on processors and growers. This notice provides for a 60-day comment period for interested parties to comment on the petition to develop a proposed revision of the standard. Should AMS conclude that there is a need for changes to the standard, detailed work would be undertaken as soon as possible and the eventual proposed grade standards would be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30281 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket #AMS–FV–08–0078]

United States Standards for Grades of Topped Carrots

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Topped Carrots. AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in fostering commerce. As a result, AMS has identified the United States Standards for Grades of Topped Carrots for possible revisions. AMS is proposing to revise the color requirement to allow topped carrots of any color characteristic of the variety to be graded using the standards. In addition, the similar varietal characteristic requirement would be amended to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack. Also, AMS is considering removing the ''Unclassified'' category from the standards. AMS is seeking comments regarding these changes as well as any other possible revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 20, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Standardization and Training Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, Riverside Business Park, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; Fax (540) 361–1184. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Newell, Standardization and Training Section, Fresh Products Branch, (540) 361–1120. The United States Standards for Grades of Topped Carrots are available by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/freshinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is considering revisions to the voluntary United States Standards for Grades of Topped Carrots using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on December 20, 1965.

Background

AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Topped Carrots for possible revision. Prior to undertaking detailed work developing the proposed revisions in the standards, AMS is soliciting comments on the

proposed revision and any other comments regarding revisions to the United States Standards for Grades of Topped Carrots to better serve the industry.

The current standard only applies to topped carrots of orange, orange red or orange scarlet color. AMS would revise the color requirement to allow topped carrots of any color characteristic of the variety to be graded using the standard. In addition, AMS would amend the similar varietal characteristic requirement to allow mixed colors and/or types of carrots when designated as a mixed or specialty pack.

AMS would also eliminate the ''Unclassified'' category. AMS is removing this section in all standards as they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary due to current marketing practices.

This notice provides for a 60-day comment period for interested parties to comment on the revision to the United States Standards for Grades of Topped Carrots. Should AMS proceed with the revisions, it will develop the proposed revised standards that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Dated: December 16, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30279 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Food Purchase Study—III

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection of data for the School Food Purchase Study-III. This is a request for reinstatement with changes of a previously approved OMB package (OMB #0584–0471, expiration data 6/30/98). It is the third in a series of studies designed to provide statistically valid national estimates of the types, amounts, and costs of food acquisitions (both purchased foods and USDA donated commodities) made by public school districts participating in the National School Lunch Program (OMB #0584–006, expiration date 3/31/2009). This proposed collection is in response to a Congressional mandate in the Food, Conservation, and Energy Act of 2008.

DATES: Written comments must be submitted on or before February 20, 2009.

ADDRESSES: Comments are invited on (a) Whether the proposed data collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 1014, 3101 Park Center Drive, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection forms and instructions should be directed to Steven Carlson on 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: The School Food Purchase Study—III.

OMB Number: OMB #0584–0471.

Expiration Date: 6/30/98.

Type of Request: Reinstatement with changes of a previously approved OMB package.

Abstract: In response to the Congressional mandate in Section 4307 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110–246, (Farm Bill), this study will provide statistically valid national estimates of the types, amounts, and costs of food acquired by local public school districts participating in the National School Lunch Program and School Breakfast Program (OMB # 0584–0012, expiration date 3/31/2009). The study is restricted to public school districts to allow for direct comparisons of results to the previous school food purchase study (School Year 1996–97). For example, the study will examine the changes in the mix of foods acquired by public schools since the School Year 1996–97. In addition, the study will furnish the opportunity for schools to describe their food purchase practices so that information associated with food buying efficiency can be provided to other schools.

A nationally representative sample of approximately 400 School Food Authorities (SFAs) will be scientifically selected and divided into four subsamples of about 100 SFAs each. Each subgroup of 100 SFAs will provide source documents (vendor summaries, invoices, etc.) containing complete food purchase information for all food acquisitions made during a three-month period representing a specific quarter of the school year. The quarterly sample design insures that data is collected across the entire school year and restricts the burden on any one school district to only three months of data collection. SFA food service directors will be asked to describe school food purchase practices and school food service operations. This allows for the examination of relationships between food purchasing practices and costs of foods to schools.

This study will be augmented by the collection of food purchase data and food purchase practice information from a purposive sample of approximately 18 SFAs in areas outside the contiguous United States (Alaska, Hawaii, and Puerto Rico) to examine food costs and procurement procedures in these areas compared to those found in the contiguous United States.

Affected Public: School Food Authorities.

Estimated Number of Respondents: Approximately 418 SFA directors, 400 SFA directors within the contiguous United States and 18 SFA directors from areas outside the contiguous United States.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 418.

Hours per Response: 13.

Estimated Total Annual Burden on Respondents: 5,434 hours.

Dated: December 16, 2008.

E. Enrique Gomez,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E8–30351 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Resource Coordinating Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to establish the Forest Resource Coordinating Committee and call for nominations.

SUMMARY: The Secretary of Agriculture intends to establish the Forest Resource Coordinating Committee (Committee) pursuant to Section 8005 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) passed into law as an amendment to the Cooperative Forestry Assistance Act of 1978 on June 18, 2008. The Forest Resource Coordinating Committee is being established to coordinate non-industrial private forestry activities within the Department of Agriculture and with the private sector. As required by the Federal Advisory Committee Act, charters for Federal advisory committees must be renewed every two years. The Committee is soliciting nominations to fill eight vacancies with staggered terms up to three years. The public is invited to submit nominations for membership on the Forest Resource Coordinating Committee.

DATES: All nominations must be received in writing by January 6, 2009. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information).

ADDRESSES: Send application to James Melonas, Forest Service, USDA, Cooperative Forestry, Room 4SE, 201 14th Street, SW., Washington, DC 20024, by express mail or overnight courier service. Nominations sent via the U.S. Postal Service must be sent to the following address: U.S. Department of Agriculture, Forest Service, Cooperative Forestry, State & Private Forestry, Mail Stop 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123.

FOR FURTHER INFORMATION CONTACT: Ted Beauvais, Cooperative Forestry, State and Private Forestry, telephone (202) 205–1190, fax (202) 205–1271, e-mail: *tbeauvais@fs.fed.us,* or James Melonas, Cooperative Forestry, State and Private Forestry, telephone (202) 205–1382, fax (202) 205–1271, e-mail: *jmelonas@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), notice is hereby given that the Secretary of Agriculture intends to establish the charter of the Forest Resource Coordinating Committee (Committee). The purpose of the Committee is to provide direction and coordination of actions within the Department of Agriculture, and coordination with State agencies and the private sector, to effectively address the national priorities for private forest conservation, with specific focus on owners of non-industrial private forest land as described in Section 8005 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246):

1. Conserving and managing working forest landscapes for multiple values and uses;
2. Protecting forests from threats, including catastrophic wildfires, hurricanes, tornadoes, windstorms, snow or ice storms, flooding, drought, invasive species, insect or disease outbreak, or development, and restoring appropriate forest types in response to such threats; and
3. Enhancing public benefits from private forests, including air and water quality, soil conservation, biological diversity, carbon storage, forest products, forestry-related jobs, production of renewable energy, wildlife, wildlife corridors and wildlife habitat, and recreation.

The Committee is being established in accordance with Section 8005 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on an annual basis and its primary duties will include:

1. Provide direction and coordination of actions within the Department of Agriculture, and coordination with State agencies and private sector, to effectively address the national priorities, with specific focus on non-industrial private forest land;
2. Clarify individual responsibilities of each agency represented on the Committee concerning the national priorities with specific focus on non-industrial private forest land;
3. Provide advice on the allocation of funds, including the competitive funds set-aside for Competitive Allocation of Funds Innovation Projects (Sections 8007 and 8008 of the Food, Conservation, and Energy Act of 2008 (Pub L. 110–246)); and
4. Assist the Secretary in developing and reviewing the report to Congress required by Section 8001(d) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

Advisory Committee Organization

The Committee structure agreed to by the Secretary follows:

(a) Chief of the Forest Service;
(b) Chief of the Natural Resources Conservation Service;
(c) Administrator of the Farm Service Agency;
(d) Director of the National Institute of Food and Agriculture;
(e) Three State foresters or equivalent State officials from geographically diverse regions of the United States;
(f) A representative of a State fish and wildlife agency;
(g) A representative from the Department of Interior; and
(h) A representative from the Department of Defense.

Vacancies

Representatives below will be appointed by the Secretary to 3-year terms, although initial appointments shall have staggered terms. Vacancies will be filled in the manner in which the original appointment was made. The representatives are as follows:

(a) An owner of non-industrial private forest land;
(b) A forest industry representative;
(c) A conservation organization representative;
(d) A land-grant university or college representative;
(e) A private forestry consultant;
(f) A representative from a State Technical Committee;
(g) A representative of an Indian Tribe; and
(h) A representative from a Conservation District.

The Committee Chair will be the Chief of the Forest Service, in

accordance with Section 8005 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

Nomination and Application Information for the Forest Resource Coordinating Committee

The appointment of members to the Committee will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to represent the vacancies listed above to serve on the Forest Resource Coordinating Committee. To be considered for membership, nominees must:

1. Identify what vacancy they would represent and how they are qualified to represent that vacancy;

2. State why they want to serve on the committee and what they can contribute;

3. Show their past experience in working successfully as part of a coordinating group; and

4. Complete form AD–755, Advisory Committee Membership Background Information.

Letters of recommendation are welcome. Individuals may also nominate themselves. Form AD–755 may be obtained from Forest Service contact persons or from the following Web site: *http://www.fsa.usda.gov/Internet/FSA_File/ad755.pdf.* All nominations will be vetted by the Agency. The Secretary of Agriculture shall appoint committee members to the Forest Resource Coordinating Committee from list of qualified applicants. Applicants are strongly encouraged to submit nominations via overnight mail or delivery to ensure timely receipt by the USDA.

Non-Federal members of the Committee shall serve without pay, but will be reimbursed for reasonable costs incurred while performing duties on behalf of the Committee.

Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendation of the Committee has taken into account the needs of the diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: December 15, 2008.

Boyd K Rutherford,

Assistant Secretary for Administration.

[FR Doc. E8–30353 Filed 12–19–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 69–2008)

Foreign–Trade Zone 149 Port Freeport, Texas, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Port Freeport, grantee of FTZ 149, requesting authority to expand FTZ 149 to include a site in Fort Bend County, Texas. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 11, 2008.

FTZ 149 was approved on June 28, 1988 (Board Order 385, 53 FR 26096, July 11, 1988), and expanded on August 7, 2001 (Board Order 1185, 66 F.R. 42994, August 16, 2001). The zone currently consists of 10 sites (3,590 acres): Site 1 (280 acres)--on F.M. Route 1495 at the Freeport Harbor on the west side of the Brazos River Harbor Channel; Site 2 (154 acres)--on Holly Street in Quintana, south of the Gulf Intracoastal Waterway; Site 3 (1,063 acres)--at the intersection of Highway 288 and F.M. Route 1495; Site 4 (242 acres)--on F.M. Route 1495, north of the Gulf Intracoastal Waterway and south of the Brazos River Harbor Channel; Site 5 (213 acres)--on County Road 723 south of Site 4 and the Gulf Intracoastal Waterway; Site 6 (146 acres) located within the 665–acre Brazoria County Airport; Site 7 (506 acres)--Northern Industrial Complex, adjacent to Highway 35, Pearland (Brazoria County); Site 8 (832 acres)--Southern Industrial Complex, 4 miles from the Sam Houston Parkway/Beltway 8, Pearland (Brazoria County); Site 9 (146 acres)--Bybee–Sterling Complex, Hooper Road and Sam Houston Parkway, Pearland (Harris County); and, Site 10 (8 acres)--Santa Fe Industrial Park, 200 Avenue I, Alvin (Brazoria County).

The applicant is now requesting authority to expand the zone to include a site in Fort Bend County: Proposed Site 11 (340 acres)--International Industrial Park, 10925 Highway 59 between Beasley and Kendleton. The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 20, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 9, 2009.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 1919 Smith Street, Suite 1026, Houston, Texas 77002. Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: December 12, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30428 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 64–2008

Foreign–Trade Zone 8 - Toledo, Ohio Area, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Toledo–Lucas County Port Authority, grantee of FTZ 8, requesting authority to expand Site 1 at the Port of Toledo complex, within the Toledo/Sandusky Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 2, 2008.

FTZ 8 was approved by the Board on October 11, 1960 (Board Order 51, 25 FR 9909, 10/15/60) and expanded on January 22, 1973 (Board Order 92, 38 FR 3015, 1/31/73); on January 11, 1985 (Board Order 277, 50 FR 2702, 1/18/85); on August 19, 1991 (Board Order 532, 56 FR 42026, 8/26/91); on June 12, 2000 (Board Order 1102, 65 FR 37960, 6/19/00); on June 7, 2002 (Board Order 1231, 67 FR 41393, 6/18/02); and, on August

23, 2005 (Board Order 1408, 70 FR 51335, 8/30/05). The general–purpose zone project currently consists of six sites in the Toledo area: *Site 1:* (150 acres) - Overseas Cargo Center within the Port of Toledo complex; *Site 2:* (337 acres) - Toledo Express Airport, Swanton; *Site 3:* (10 acres) - First Choice Packaging warehouse, 1501 West State Street, Fremont; *Site 4:* (462 acres) - Cedar Point Development Park, Oregon; *Site 5:* (205 acres) Ohio Northern Global Distribution and Business Center, Walbridge; and, *Site 6:* (86 acres) at the Greenbelt Development Park, Toledo, Ohio.

The applicant is now requesting authority to expand Site 1 to include the Ironville Terminal (182 acres) located adjacent to the Overseas Cargo Center within the Port of Toledo Complex. The site was recently acquired by the Toledo Lucas County Port Authority and will be operated by Midwest Terminals of Toledo.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 20, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 9, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 300 Madison Avenue, Suite 270, Toledo, Ohio 43604

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW, Washington, DC 20230

For further information contact Claudia Hausler at Claudia_Hausler@ita.doc.gov or (202)-482–1379.

Dated: December 4, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30429 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 68–2008)

Foreign–Trade Zone 82 Mobile, Alabama, Expansion of Manufacturing Authority, Sony Electronics Inc.(Digital Print Media Products), Dothan, Alabama

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Sony Electronics Inc. (Sony), operator of Subzone 82D, requesting an expansion of the scope of manufacturing authority approved within Subzone 82D in Dothan, Alabama. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 11, 2008.

Subzone 82D (414 employees) was approved by the Board on April 19, 1996 for the manufacture of unrecorded magnetic media and battery systems (Board Order 816, 61 FR 18547, 4/26/1996). The subzone consists of four sites in Dothan, Alabama: Site 1 (74 acres) - 4275 Main Street; Site 2 (3.3 acres) - 135 Woodburn Drive; Site 3 (1.6 acres) - 921 Tate Drive; and, Site 4: 120,000 square feet on 3 acres located at 4106 Napier Front Road.

The current request involves the addition of digital print media products to the scope of authority for the subzone. Components and materials sourced from abroad (representing 62% of the value of the finished product) include: ultraviolet absorber, friction control lubricants, ribbons, binders, resin, curing agents, cleaning paper, plastic bags, spools, print media and tags (duty rate ranges from duty–free to 6.5%).

FTZ procedures could exempt Sony from customs duty payments on the foreign components used in export production of digital print media. The company anticipates that some 25 percent of the production will be exported. On its domestic sales, Sony would be able to choose the duty rates during customs entry procedures that apply to finished digital print media products (duty–free) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 20, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 9, 2009.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the City Clerk, City of Mobile, 9th Floor, South Tower, Government Plaza, 205 Government Street, Mobile, AL 36602.

Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth_Whiteman@ita.doc.gov or (202) 482–0473.

Dated: December 12, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30426 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1597

Grant of Authority for Subzone Status, Amgen Manufacturing Limited (Biotechnology and Healthcare Products), Juncos, Puerto Rico

Pursuant to its authority under the Foreign–Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Puerto Rico Industrial Development Company, grantee of Foreign–Trade Zone 7, has made application to the Board for authority to establish a special–purpose subzone for the manufacture of biotechnology and healthcare products at the facility of Amgen Manufacturing Limited, located in Juncos, Puerto Rico (FTZ Docket 41–2008, filed 6/19/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 36298, 6/26/08); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacture of biotechnology and healthcare products at the facility of Amgen Manufacturing Limited, located in Juncos, Puerto Rico (Subzone 7M), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 11th day of December 2008.

Stephen J. Claeys,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30443 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 85–15A18.

SUMMARY: On December 16, 2008, the U.S. Department of Commerce issued an amended Export Trade Certificate of Review to U.S. Shippers Association (''USSA'').

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2008).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The original USSA Certificate (No. 85–00018) was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on January 16, 2008 (73 FR 3944, January 23, 2008).

USSA's Export Trade Certificate of Review has been amended to:

Proposed Amendment: USSA seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Guardian Industries Corp., Auburn Hills, Michigan; Alpharma Inc., Bridgewater, New Jersey; LyondellBasell Industries A.F.S.C.A., Rotterdam, The Netherlands;

2. Delete the following companies as ''Members'' of the Certificate: Arch Chemicals, Inc., Norwalk, Connecticut; Basell USA, Inc., Wilmington, Delaware (Controlling Entity: Basell NV, The Netherlands); Dawn K. Peterson, Katy, Texas; and Carrie M. Bowden, Missouri City, Texas; and

3. Change the address of the current Member from ''JWC and Company LLC, of Macungie, Pennsylvania'' to ''JWC and Company, LLC, of Canton, Michigan''.

The effective date of the amended certificate is September 17, 2008. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 16, 2008.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8–30290 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Proposed Information Collection; Comment Request; National Minority Enterprise Development (MED) Week Awards Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Proposed Information Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before February 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 7845, 1401 Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the Stephen Boykin, MED Week Awards Manager, Minority Business Development Agency, U.S. Department of Commerce, Room 5090, 1401 Constitution Avenue, NW., Washington, DC, 20230; telephone: 202–482–1712; e-mail: *sboykin@mbda.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Minority Business Development Agency (MBDA) is the only federal agency created exclusively to foster the establishment and growth of minority-owned businesses in the United States. For this purpose, a minority-owned business must be owned or controlled by one or of the following persons or groups of persons: African American, American Indian, Alaska Native, Asian, Hispanic, Native Hawaiian, Pacific Islander, Asian Indian, and Hasidic Jew. MBDA actively promotes the growth and competitiveness of large, medium, and small minority business enterprises by offering management and technical assistance through a network of regional and local business centers throughout the United States.

One of MBDA's largest initiatives is the annual Regional and National Minority Enterprise Development (MED) Week Conferences. The conferences recognizes the role that minority entrepreneurs play in building the Nation's economy through the creation of jobs, products and services, in addition to supporting their local communities. It includes the private, non-profit, and government sectors and provides a venue to discuss critical business issues affecting minority business as well as strategies to foster the growth and competitiveness of the minority business community. The MED Week Awards Program is a key element of the conferences and celebrates the outstanding achievements of minority entrepreneurs. MBDA may make awards in the following categories: Minority Construction Firm of the Year, Minority Manufacturer of the Year, Minority Service Firm of the Year, Minority Technology Firm of the Year, Minority Supplier Distributer of the Year, Advocate of the Year, Media Award, Distinguished Supplier Diversity Award, Access to Capital Award, Ronald H. Brown Leadership Award, and the Abe Venable Legacy Award for Lifetime Achievement. All awards with the exception of the Ronald H. Brown Leadership Award and the Abe Venable Legacy Award for Lifetime Achievement will be presented at both MBDA Regional and National MED Weeks. The Ronald H. Brown Leadership Award and the Abe Venable Legacy Award for Lifetime Achievement will be presented only at National MED Week.

Nominations for these awards are open to the public. MBDA must collect two types of information: (a) Information identifying the nominee and nominator, and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced evaluation criterion. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases the burden on applicants and reviewers. Participation in the MED Week Awards Program competition is voluntary and the awards are strictly honorary.

II. Method of Collection

The form may be submitted electronically or paper format.

III. Data

OMB Control Number: None (new collection).

Form Number: Not applicable.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, state, local and tribal government, Federal government.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Total Annual Cost to the Public: $0.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–30264 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XL20

Habitat Conservation Plan for the City and County of San Francisco, through its Public Utilities Commission, for the Operation and Maintenance Activities of its Alameda Watershed, Alameda and Santa Clara Counties, California

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR); notice of public scoping meetings.

SUMMARY:

Pursuant to the National Environmental Policy Act (NEPA), the FWS and NMFS (Services), are issuing this notice to advise the public of our intent, in coordination with the San Francisco Planning Department, to conduct public scoping necessary to gather information to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The EIS/EIR will analyze the environmental effects of the of the Services' proposed issuance of an incidental take permit under the Endangered Species Act of 1973, as amended, (hereafter ESA or Act), for a Habitat Conservation Plan (Plan) within a portion of the Alameda Creek watershed. The permit applicant is the City and County of San Francisco through its Public Utilities Commission (SFPUC). The SFPUC intends to request a 30-year permit for five federally listed as threatened or endangered species and 12 unlisted species that may become listed during the term of the permit. The permit is needed to authorize the incidental take of threatened and endangered species that could occur as a result of the SFPUC's operations and maintenance activities on SFPUC lands within the Alameda Creek watershed.

The Services provide this notice to (1) describe the proposed Plan and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of the intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR. Pursuant to the California Environmental Quality Act (CEQA), a separate Notice of Preparation for the EIS/EIR will be posted by the San Francisco Planning Department, Major Environmental Analysis (MEA) Division with the State Clearinghouse.

DATES: A public meeting will be held on Tuesday, January 13, 2009, from 6:30 p.m. to 9:00 p.m. Written comments should be received on or before January 21, 2009.

ADDRESSES: The public meeting will be held at the Dublin Civic Center, Regional Meeting Room, 100 Civic Plaza, Dublin, California.

Information, written comments, or questions related to the preparation of the EIS/EIR should be sent to: Sheila Larsen, Senior Fish and Wildlife Biologist, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825, facsimile (916) 414–6713; Gary Stern, San

Francisco Bay Region Team Coordinator, National Marine Fisheries Service, Santa Rosa Area Office, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404, facsimile (707) 578–3435; or via e-mail to *SWR.AlamedaHCP@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen at (916) 414–6600; or Gary Stern at (707) 575–6060.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened. The Act defines the term ''take'' as: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1532(19)). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding and sheltering (50 CFR 17.3(c)). NMFS' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999). Pursuant to Section 10(a) of the Act, the Services may issue a permit to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The Services' regulations governing permits for threatened and endangered species, respectively, are promulgated in 50 CFR 17.32 and 50 CFR 17.22. NMFS regulations governing permits for threatened and endangered species are promulgated in 50 CFR 222.22.

Section 10(a) of the Act specifies requirements for the issuance of Incidental Take Permits (ITPs) to non-Federal landowners for the take of endangered and threatened species. Any proposed take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, an applicant must prepare a habitat conservation plan describing the impact that will likely result from such taking, the strategy for minimizing and mitigating the incidental take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented. To obtain ITPs the applicant must prepare a habitat conservation plan that meets the issuance criteria established by the Services (50 CFR 17.22(b)(2) and 222.307). Should permits be issued, the permits would include assurances under the Services' ''No Surprises'' regulations [50 CFR 17.22(b)(5) and 17.32(b)(5)].

Take of listed plant species is not prohibited under the Act and cannot be authorized under an ESA section 10 permit. The Services propose to include plant species on the permit in recognition of the conservation benefits provided for them under the Plan. Unlisted covered species would receive assurances under the Services' ''No Surprises'' regulations.

Currently, 17 species (Covered Species) are proposed for coverage under the Plan, including 5 federally listed species and 12 unlisted species that may become listed during the term of the permits. The 5 federally listed species are the endangered callippe silverspot butterfly (*Speyeria callippe callippe*) and the threatened California red-legged frog (*Rana aurora draytonii*); Alameda whipsnake (*Masticophis lateralis euryxanthus*); California tiger salamander (*Ambystoma californiense*); and Central California Coast steelhead (*Oncorhynchus mykiss*). The 12 unlisted species proposed for coverage are the foothill yellow-legged frog (*Rana boylii*); western pond turtle (*Clemmys* (=*Actinemys*) *marmorata marmorata* and *C.* (=*Actinemys*) *m. pallida*); Townsend's big-eared bat (*Corynorhinus townsendii townsendii*); Pacific lamprey (*Lampetra tridentata*); fall-run Chinook salmon (*Oncorhynchus tshawytscha*); tricolored blackbird (*Agelaius tricolor*); western burrowing owl (*Athene cunicularia hypugaea*); Diablo helianthella (*Helianthella castanea*); fragrant fritillary (*Fritillaria liliacea*); most beautiful jewelflower (*Streptanthus alba ssp. peramoenus*); robust monardella (*Monardella villosa ssp. globosa*); and round-leaved filaree (*Erodium macrophyllum*). Species may be added or deleted during the course of the proposed Plan development based on further analysis, new information, agency consultation, and public comment.

Proposed Plan

The southern Alameda Creek watershed (Alameda Watershed) encompasses 175 square miles of rolling grassland and native oak woodlands east of San Francisco Bay, California. The proposed Plan study area includes approximately 36,800 acres of Alameda Watershed lands owned by the SFPUC in Alameda and Santa Clara counties, plus approximately 9,900 acres immediately adjacent to SFPUC lands. The additional 9,900 acres include all privately owned, one-square mile (640 acres) sections of land adjacent to SFPUC lands on Poverty Ridge and Oak Ridge and all private lands on Apperson Ridge between the San Antonio Reservoir and lands owned by the East Bay Regional Park District. These privately owned lands are included in the study area because the SFPUC may purchase land or conservation easements from willing sellers under the proposed Plan for mitigation sites. The permits associated with the proposed Plan would authorize the take of listed species that may occur during ongoing operations and maintenance activities on SFPUC lands in the Alameda Watershed.

Activities covered by the proposed Plan (Covered Activities) include watershed operations and maintenance activities such as road maintenance and construction, culvert maintenance and replacement, bridge replacement and construction, fence maintenance and installation, vegetation management, riparian and pond habitat enhancement, pond spillway repair, stream restoration, and recreation activities, including elements of the Sunol Valley Landscape and Recreation Plan, on land owned and managed by the SFPUC. Covered Activities also include reservoir operations and maintenance activities such as operations of the Calaveras and San Antonio reservoirs, operations and maintenance of Alameda Creek Diversion Dam, reservoir shoreline erosion protection measures (grading and log placement along the shoreline) and restoration, boat-launch construction, vegetation and debris management on dams, and maintenance of sludge ponds. Water transmission and filtration-system operations and maintenance activities such as the opening and closing of valves to test proper functioning and pipeline maintenance will also be Covered Activities as well as lease/permit and easement activities (i.e., operations and management for livestock grazing, nurseries, golf courses, and telecommunication sites).

As part of the SFPUC's Water System Improvement Program (WSIP), some of the existing facilities included in the proposed Plan's covered activities may be modified, improved, or replaced. Proposed WSIP projects within the Plan study area include the Calaveras Dam Replacement Project, San Antonio Backup Pipeline, and improvements at the Sunol Valley Water Treatment Plant.

The SFPUC proposes to address the effects of construction of WSIP projects through separate regulatory review and permitting processes. If an ITP is issued by the FWS and NMFS prior to the completion of environmental review of any WSIP projects in the Alameda watershed, FWS and NMFS will review the proposed WSIP project for consistency with the Plan. If either FWS or NMFS determines that the future operations and maintenance of the proposed WSIP project are not consistent with the Plan, an amendment to the Plan will be required.

Under the proposed Plan, the effects on covered species resulting from the Covered Activities are expected to be minimized and mitigated to the maximum extent practicable through implementation of a conservation program that includes conservation actions and monitoring, which will be fully described in the proposed Plan. This conservation program will focus on providing for the long-term management of biological communities in the Plan area that support Covered Species. The conservation strategy will implement best management practices throughout the watershed to minimize impacts from all SFPUC Covered Activities. The conservation strategy will provide mitigation for both temporary and ongoing impacts on Covered Species in the form of habitat enhancement, restoration, and, if necessary, protection of additional habitat.

Environmental Impact Statement/ Report

The EIS/EIR will consider the proposed action, the issuance of section 10(a)(1)(B) permits under the Act, and several alternatives, representing varying levels of conservation, impacts from covered activities, the list of covered species, or a combination of these factors. Additionally, a No Action alternative will be included. Under the No Action alternative the Services would not issue section 10(a)(1)(B) permits. In addition, the EIS/EIR will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental resources that could occur with the implementation of the proposed actions and alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS/EIR. For all potentially significant impacts, the EIS/ EIR will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

The primary purpose of the scoping process is for the public to assist the Services and the San Francisco Planning Department in developing the EIS/EIR by identifying important issues and alternatives related to the proposed action. FWS and NMFS propose to serve as co-lead Federal agencies under NEPA for preparation of the EIS. The San Francisco Planning Department will be the lead agency for preparation of the EIR under CEQA.

The Services request that comments be specific. In particular, we request information regarding: the direct, indirect, and cumulative impacts that implementation of the proposed Plan could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

Written comments from interested parties are invited to ensure that the full range of issues related to the permit requests is identified. Comments will only be accepted in written form. You may submit written comments by mail, electronic mail to NMFS, facsimile transmission, or in person (see **ADDRESSES**). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Sheila Larsen at (916) 414-6600. To allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Dated: December 15, 2008.

Richard E. Sayers, Jr.,

Acting Deputy Regional Director, Deputy Regional Director, California and Nevada Region, Sacramento, California.

Dated: December 16, 2008.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources.

[FR Doc. E8–30374 Filed 12–19–08; 8:45 am]

BILLING CODES 4310–55–S, 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL89

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in Southeast Asia, March–July 2009

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in Southeast (SE) Asia during March-July 2009. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize L-DEO to incidentally take, by Level B harassment only, small numbers of marine mammals during the aforementioned activity.

DATES: Comments and information must be received no later than January 21, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is PR1.0648–XL89@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning

the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS= review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 27, 2008, NMFS received an application from L-DEO for the taking, by Level B harassment only, of small numbers of marine mammals incidental to conducting, under cooperative agreement with the National Science Foundation (NSF), a marine seismic survey in SE Asia. The funding for the Taiwan Integrated Geodynamics Research (TAIGER) survey is provided by the NSF. The proposed survey will encompass the area 17 30'-26 30' N, 113 30'-126 E within the Exclusive Economic Zones (EEZ) of Taiwan, China, Japan, and the Philippines, and on the high seas, and is scheduled to occur from March 21 to July 14, 2009. Some minor deviation from these dates is possible, depending on logistics and weather.

Taiwan is one of only a few sites of arc-continent collision worldwide; and one of the primary tectonic environments for large scale mountain building. The primary purpose of the TAIGER project is to investigate the processes of mountain building, a fundamental set of processes which plays a major role in shaping the face of the Earth. The vicinity of Taiwan is particularly well-suited for this type of study, because the collision can be observed at different stages of its evolution, from incipient, to mature, and finally to post-collision.

As a result of its location in an ongoing tectonic collision zone, Taiwan experiences a great number of earthquakes, most are small, but many are large and destructive. This project will provide a great deal of information about the nature of the earthquakes around Taiwan and will lead to a better assessment of the earthquake hazards in the area. The information obtained from this study will help the people and the earthquake hazards in the area. The information obtained from this study will help the people and government of Taiwan to better prepare for future seismic events and may thus mitigate some of the loss of life and economic disruptions that will inevitably occur.

The proposed action is planned to take place in the territorial seas and EEZ's of foreign nations, and will be continuous with the activity that takes place on the high seas. NMFS does not authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS still needs to calculate the level of incidental take in territorial seas as part of the proposed issuance of an IHA in regards to NMFS' analysis of small numbers and negligible impact determination.

Description of the Specified Activity

The planned survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), which will occur in SE Asia. The *Langseth* will deploy an array of 36 airguns (6,600 in^3) as an energy source at a tow depth of 6–9 m (20–30 ft). The receiving system will consist of a hydrophone streamer and approximately 100 ocean bottom seismometers (OBSs). The *Langseth* will deploy an 8 km (5 mi) long streamer for most transects requiring a streamer; however, a shorter streamer (500 m to 2km or 1,640 ft to 1.2 mi) will be used during surveys in Taiwan (Formosa) Strait. As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis. The OBSs to be used for the TAIGER program will be deployed and retrieved numerous times by a combination of 4 or 5 Taiwanese support vessels, as well as the *Langseth*. The *Langseth* will also retrieve 20 OBSs that were deployed in the study area during previous years to record earthquake activity.

Approximately 100 OBSs will be deployed during the survey. OBSs will likely be deployed and retrieved by the *Langseth* as well as a combination of 4 to 5 Taiwanese vessels. The Taiwanese vessels to be used include two 30 m (98.4 ft) vessels (the R/V *Ocean Researcher 2* and the R/V *Ocean Researcher 3*) and two vessels greater than 60 m (196.8 ft) in length (R/V *Fisheries Research I* and the Navy ship *Taquan*). The R/V *Ocean Research I* may also be used if the *Langseth* is not used to deploy OBSs. The OBS deployment spacing will vary depending on the number of instruments available and shiptime. The nominal spacing is 15 km (9.3 mi), but this will vary from as little as 5 km (3.1 mi) to perhaps as much as 25 km (15.5 mi). The OBSs will be deployed and recovered several (2 to 4) times. 60 of the 100 OBSs may be deployed from the *Langseth*. All OBSs will be retrieved at the end of the study.

Up to 3 different types of OBSs may be used during the 2009 program. The Woods Hole Oceanographic Institution (WHOI) ''D2'' OBS has a height of

approximately 1 m (3.3 ft) and a maximum diameter of 50 cm. The anchor is made of hot-rolled steel and weighs 23 kg (50.7 lbs). The anchor dimensions are 2.5 x 30.5 x 38.1 cm. The LC4x4 OBS from the Scripps Institution of Oceanography (SIO) has a volume of approximately 1 m^3 (3.3 ft^2), with an anchor that consists of a large piece of steel grating (approximately 1 m^2 or 3.3 ft^2). Taiwanese OBSs will also be used; their anchor is in the shape of an 'x' with dimensions of 51–76 cm^2 (1.7–2.5 ft^2). Once the OBS is ready to be retrieved an acoustic release transponder interrogates the OBS at a frequency of 9–11 kHz, and a response is received at a frequency of 9–13 kHz. The burn wire release assembly is then activated, and the instrument is released from the anchor to float to the surface.

The planned seismic survey will consist of approximately 15,902 km (9,881 mi) of transect lines within the South and East China Seas as well as the Philippine Sea, with the majority of the survey effort occurring in the South China Sea. The survey will take place in water depths ranging from approximately 25 to 6,585 m (82–21,598 ft), but most of the survey effort (approximately 80 percent) will take place in water greater than 1,000 m (3,280 ft), 13 percent will take place in intermediate depth waters (100–1,000 m or 328–3,280 ft), and 7 percent will occur in shallow depth water (less than 100 m or 328 ft).

All planned geophysical data acquisition activities will be conducted by L-DEO with onboard assistance by the scientists who have proposed the study. The scientific team consists of Dr. Francis Wu (State University of New York at Binghamton) and Dr. Kirk McIntosh (University of Texas at Austin, Institute of Geophysics). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the airgun array, a 12 kHz Simrad EM 120 multibeam echosounder (MBES) and a 3.5 kHz sub-bottom profiler (SBP) will be operated from the *Langseth* continuously throughout the TAIGER cruise.

Vessel Specifications

The *Langseth* has a length of 71.5 m (234.6 ft), a beam of 17 m (55.8 ft), and a maximum draft of 5.9 m (19.4 ft). The ship was designed as a seismic research vessel, with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals. The ship is powered by two Bergen BRG–6 diesel engines, each producing 3,550 hp, that drive the two propellers directly. Each propeller has 4 blades, and the shaft typically rotates at 750 rpm. The vessel also has an 800 hp bowthruster. The operation speed during seismic acquisition is typically 7.4–9.3 km/hr (4–5 kt). When not towing seismic survey gear, the *Langseth* can cruise at 20–24 km/hr (11–13 kt). When the *Langseth* is towing the airgun array as well as the hydrophone streamer, the turning rate of the vessel is limited to 5 degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer. The *Langseth* has a range of 25,000 km (15,534 mi). The *Langseth* will also serve as the platform from which vessel-based marine mammal observers (MMOs) will watch for animals before and during airgun operations.

Acoustic Source Specifications

Seismic Airguns

During the proposed survey, the airgun array to be used will consist of 36 airguns, with a total volume of approximately 6,600 in^3. The airgun array will consist of a mixture of Bolt 1500LL and 1900LL airguns. The airguns array will be configured as 4 identical linear arrays or ''strings'' (see Figure 2 in L-DEO's application). Each string will have 10 airguns; the first and last airguns in the strings are spaced 16 m (52.5 ft) apart. Nine airguns in each string will be fired simultaneously, while the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The 4 airgun strings will be distributed across an approximate area of 24 x 16 m (78.7 x 52.5 ft) behind the *Langseth* and will be towed approximately 140 m (459 ft) behind the vessel. The shot interval will be relatively short (approximately 25–50 m or 82–164 ft or 10–25 s) for multi-channel seismic surveying with the hydrophone streamer, and relatively long (approximately 100–125 m or 328–410 ft or 45–60 s) when recording data on the OBSs. The firing pressure of the array is 1,900 psi. During firing, a brief (approximately 0.1 s) pulse of sound is emitted. The airguns will be silent during the intervening periods.

The tow depth of the array will be 6–9 m (20–30 ft). The depth at which the source is towed (particularly a large source) affects the maximum near-field output and the shape of its frequency spectrum. If the source is towed at 9 m (30 ft), the effective source level for sound propagating in near-horizontal directions is higher than if the array is towed at shallow depths (see Figure 3–5 of L-DEO's application). However, the nominal source levels of the array (or the estimates of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array) at various tow depths are nearly identical. In L-DEO's calculations, a tow depth of 9 m is assumed at all times.

Because the actual source is a distributed source (36 airguns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source (265 dB re 1 μPa•m, peak-to-peak). In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

Multibeam Echosounder

The Simrad EM120 operates at 11.25–12.6 kHz and is hull-mounted on the *Langseth*. The beamwidth is 1° fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 μPa (rms) (Hammerstad, 2005). For deep-water operation, each ''ping'' consists of nine successive fan-shaped transmissions, each 15 millisecond (ms) in duration and each ensonifying a section that extends 1 fore-aft. The nine successive transmissions span an overall cross-track angular extent of about 150 , with 16 ms gaps between the pulses for successive sectors. A receiver in the overlap area between the two sectors would receive two 15 ms pulses separated by a 16 ms gap. In shallower water, the pulse duration is reduced to 5 or 2 ms, and the number of transmit beams is also reduced. The ping interval varies with water depth, from approximately 5 seconds (s) at 1,000 m (3,280 ft) to 20 s at 4,000 m (13,123 ft) (Kongsberg Maritime, 2005).

Sub-bottom Profiler

The SBP is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the MBES. The energy from the SBP is directed downward by a 3.5 kHz transducer in the hull of the *Langseth*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. The pulse interval is 1 s, but a common mode of operation is to broadcast five pulses at 1 s intervals followed by a 5 s pause.

Source and Volume	Tow Depth (m)	Water Depth	Predicted RMS Distances (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun 40 in³	6-9*	Deep	12	40	385
		Intermediate	18	60	578
		Shallow	150	296	1050
4 strings 36 airguns 6600 in³	6-7	Deep	220	710	4670
		Intermediate	330	1065	5189
		Shallow	1600	2761	6227
	8-9	Deep	300	950	6000
		Intermediate	450	1425	6667
		Shallow	2182	3694	8000

Table 1. Predicted distances to which sound levels >190, 180, and 160 dB re 1 μPa might be received in shallow (<100 m; 328 ft), intermediate (100-1,000 m; 328-3,280 ft), and deep (>1,000 m; 3,280 ft) water from the 36 airgun array, as well as a single airgun, used during the Central American SubFac and STEEP Gulf of Alaska survey, and planned during the TAIGER SE Asia survey. *The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in3 airgun; thus, the predicted safety radii are essentially the same at each tow depth. The most precautionary distances (i.e., for the deepest tow depth, 9m) are shown

Because the predictions in Table 1 are based in part on empirical correction factors derived from acoustic calibration of airgun configurations different from those to be used on the *Langseth* (cf. Tolstoy *et al.*, 2004a,b), L-DEO conducted an acoustic calibration study of the *Langseth*'s 36–airgun (approximately 6,600 in³) array in late 2007/early 2008 in the Gulf of Mexico (LGL Ltd. 2006). Distances where sound levels (e.g., 190, 180, and 160 dB re 1 μPa rms) were received in deep, intermediate, and shallow water will be determined for various airgun configurations. Acoustic data analysis is ongoing. After analysis, the empirical data from the 2007/2008 calibration study will be used to refine the exclusion zones (EZ) proposed above for use during the TAIGER cruise, if the data are appropriate and available for use at the time of the survey.

Proposed Dates, Duration, and Region of Activity

The survey will encompass the area 17° 30'-26 30' N, 113° 30'-126 E within the EEZs of Taiwan, China, Japan, and the Philippines. The vessel will approach mainland Taiwan within 1 km (0.6 mi) and China within 10 km (6.2 mi). The closest approach to the Ryuku Islands will be 16 km (9.9 mi). Although the survey will occur at least 32 km (29.9 mi) from Luzon, Philippines, survey lines will take place approximately 8 km (5 mi) from some of the Babuyan and Batan islands. Water depths in the survey area range from approximately 25 to 6,585 m. The TAIGER program consists of 4 legs, each starting and ending in Kao-hsiung, Taiwan. The first leg is expected to occur from approximately March 21 to April 19, 2008 and will include the survey lines in the South China Sea. The second leg is scheduled for April 20 to June 7 and will include survey lines in Luzon Strait and the Philippine Sea. The third leg (approximately June 8–20) will involve OBS recovery by the *Langseth* only; no seismic acquisition will occur during this leg. The fourth leg, consisting of the survey lines immediately around Taiwan, is scheduled to occur from June 21 to July 14, 2009. The program will consist of approximately 103 days of seismic acquisition. The exact dates of the activities depend on logistics and weather conditions.

Description of Marine Mammals in the Proposed Activity Area

A total of 34 cetacean species, including 25 odontocete (dolphins and small- and large-toothed whales) species and 9 mysticetes (baleen whales) are known to occur in the proposed TAIGER study area (see Table 2 of L-DEO's application). Cetaceans and pinnipeds are managed by NMFS and are the subject of this IHA application. Information on the occurrence, distribution, population size, and conservation status for each of the 34 marine mammal species that may occur in the proposed project area is presented in the Table 2 of L-DEO's application as well as here in the table below (Table 2). The status of these species is based on the U.S. Endangered Species Act (ESA), the International Union for Conservation of Nature (IUCN) Red List of Threatened Species, and Convention on International Trade in Endangered Species (CITES). Several species are listed as Endangered under the ESA, including the Western North Pacific gray, North Pacific right, sperm, humpback, fin, sei, and blue whales. In addition, the Indo-Pacific humpback dolphin is listed as Near Threatened and the finless porpoise is listed as Vulnerable under the 2008 IUCN Red List of Threatened Species (IUCN, 2008).

Although the dugong may have inhabited waters off Taiwan, it is no longer thought to occur there (March *et al.*, n.d.; Chou, 2004; Perrin *et al.*, 2005). Similarly, although the dugong was once widespread through the Philippines, current data suggest that it does not inhabit the Batan or Babuyan Islands or northwestern Luzon (Marsh *et al.*, n.d.; Perrin *et al.*, 2005), where seismic operations will occur. However, the dugong does occur off northeastern Luzon (Marsh *et al.*, n.d.; Perrin *et al.*, 2005) outside the study area. In China, it is only known to inhabit the waters off Guangxi and Guangdong and the west coast of Hanain Island (Marsh *et al.*, n.d.; Perrin *et al.*, 2005), which do not occur near the study area. It is rare in the Ryuku Islands, but can be sighted in Okinawa, particularly off the east coast of the island (Yoshida and Trono, 2004; Shirakihara *et al.*, 2007); some individuals may have previously occurred in the southern most of the Ryuku Islands, Yaeyama (Marsh *et al.*, n.d.), but these animals have not been documented there recently (Shirakihara *et al.*, 2007).

Wang *et al.* (2001a) noted that during the spring/summer off southern Taiwan,

the highest number of marine mammal sightings and species occur during April and June. The number of sightings per survey effort and the number of species were highest directly west of the southern tip of Taiwan and northeast off the southern tip.

Table 2 below outlines the cetacean species, their habitat and abundance in the proposed project area, and the requested take levels. Additional information regarding the distribution of these species expected to be found in the project area and how the estimated densities were calculated may be found in L-DEO's application.

TABLE 2. THE OCCURRENCE, HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, BEST AND MAXIMUM DENSITY ESTIMATES, NUMBER OF MARINE MAMMALS THAT COULD BE EXPOSED TO SOUND LEVEL AT OR ABOVE 160DB RE 1μPA, BEST ESTIMATE OF NUMBER OF INDIVIDUALS EXPOSED, AND BEST ESTIMATE OF NUMBER OF EXPOSURES PER MARINE MAMMAL IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN SE ASIA. SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.

Species	Occurrence in Study Area in SE Asia	Habitat	Regional Population Size	ESA[a]	Density/ 1000km[b] (best)	Density/ 1000km[c] (max)
Mysticetes						
Western North Pacific gray whale (*Eschrichtius robustus*)	Rare	Coastal	131[d]	EN	0	0
North Pacific right whale (*Eubalaena japonica*)	Rare	Pelagic and coastal	Less than 100[e]	EN	0	0
Humpback whale (*Megaptera novaeangliae*)	Uncommon	Mainly near-shore waters and banks	938-1107[f]	EN	0.89	1.33
Minke whale (*Balaenoptera acutorostrata*)	Uncommon	Pelagic and coastal	25,000[g]	NL	0.03	0.04
Bryde's whale (*Balaenoptera brydei*)	Common	Pelagic and coastal	20,000-30,000[e,h]	NL	0.27	0.41
Omura's whale (*Balaenoptera omurai*)	Uncommon	Pelagic and coastal	N.A.	NL	0.03	0.04
Sei whale (*Balaenoptera borealis*)	Uncommon	Primarily off-shore, pelagic	7,260-12,620[i]	EN	0.03	0.04
Fin whale (*Balaenoptera physalus*)	Uncommon	Continental slope, mostly pelagic	13.620-18.680[j]	EN	0.03	0.04
Blue whale (*Balaenoptera musculus*)	Uncommon	Pelagic and coastal	N.A.	EN	0.03	0.04
Odontocetes						
Sperm whale (*Physeter macrocephalus*)	Uncommon	Usually pe-lagic and deep seas	26,674[k]	NL	0.03	0.04
Pygmy sperm whale (*Kogia breviceps*)	Uncommon	Deep waters off shelf	N.A.	NL	0	0
Dwarf sperm whale (*Kogia sima*)	Common?	Deep waters off the shelf	11,200[e]	NL	4.25	6.68
(Kogia sp.)	Common?	Deep waters off the shelf	N.A.	NL	0.26	0.40
Cuvier's beaked whale (*Ziphius cavirostris*)	Likely Common	Pelagic	20,000[e]	NL	0.34	0.75
Longman's beaked whale (*Indopacetus pacificus*)	Rare	Deep water	N.A.	NL	N.A.	N.A.
Blainville's beaked whale (*Mesoplodon densirostris*)	Uncommon?	Pelagic	25,300[l]	NL	0.89	1.60

TABLE 2. THE OCCURRENCE, HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, BEST AND MAXIMUM DENSITY ESTIMATES, NUMBER OF MARINE MAMMALS THAT COULD BE EXPOSED TO SOUND LEVEL AT OR ABOVE 160DB RE 1μPA, BEST ESTIMATE OF NUMBER OF INDIVIDUALS EXPOSED, AND BEST ESTIMATE OF NUMBER OF EXPOSURES PER MARINE MAMMAL IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN SE ASIA. SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.—Continued

Species	Occurrence in Study Area in SE Asia	Habitat	Regional Population Size	ESA[a]	Density/ 1000km[b] (best)	Density/ 1000km[c] (max)
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)	Rare	Pelagic	N.A.	NL	N.A.	N.A.
(Mesoplodon sp.)	Uncommon?	Pelagic	N.A.	NL	1.55	1.60
Unidentified beaked whale	Rare	Pelagic	N.A.	NL	0.72	0.94
Rough-toothed beaked dolphin (*Steno bredanensis*)	Common	Deep water	146,000 ETP[e]	NL	1.33	5.44
Indo-Pacific humpback dolphin (*Sousa chinensis*)	Uncommon	Coastal	1,680 China + Taiwan[e]	NL	24.30	35.36
Common bottlenose dolphin (*Tursiops truncatus*)	Common	Coastal and oceanic, shelf break	243,500 ETP[e]	NL	24.30	35.36
Indo-Pacific bottlenose dolphin (*Tursiops aduncus*)	Common?	Coastal and shelf waters	N.A.	NL	43.60	65.40
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)	Rare	Coastal and pelagic	930,000-990,000[e]	NL	N.A.	N.A.
Pantropical spotted dolphin (*Stenella attenuata*)	Common	Coastal and pelagic	800,000 ETP[e]	NL	120.80	140.97
Spinner dolphin (*Stenella longirostris*)	Common	Coastal and pelagic	800,000 ETP[e]	NL	54.84	88.89
Striped dolphin (*Stenella coeruleoalba*)	Common	Coastal and pelagic	1,000,000 ETP[e]	NL	0.20	0.32
Fraser's dolphin (*Lagenodelphis hosei*)	Common	Waters greater than 1,000 m	289,000 ETP[e]	NL	96.84	124.14
Short-beaked common dolphin (*Delphinus delphis*)	Rare	Shelf and pelagic, seamounts	3,000,000 ETP[e]	NL	N.A.	N.A.
Long-beaked common dolphin (*Delphinus capensis*)	Uncommon	Coastal	N.A.	NL	0.05	0.12
Risso's dolphin (*Grampus griseus*)	Common	Pelagic	175,000 ETP[e]	NL	41.88	67.18
Melon-headed whale (*Peponocephala electra*)	Common?	Oceanic	45,000 ETP[e]	NL	13.37	20.86
Pygmy killer whale (*Feresa attenuata*)	Uncommon	Deep, pantropical waters	39,000 ETP[e]	NL	2.01	3.16
False killer whale (*Pseudorca crassidens*)	Common?	Pelagic	40,000[n]	NL	4.56	4.77

TABLE 2. THE OCCURRENCE, HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, BEST AND MAXIMUM DENSITY ESTIMATES, NUMBER OF MARINE MAMMALS THAT COULD BE EXPOSED TO SOUND LEVEL AT OR ABOVE 160DB RE 1μPA, BEST ESTIMATE OF NUMBER OF INDIVIDUALS EXPOSED, AND BEST ESTIMATE OF NUMBER OF EXPOSURES PER MARINE MAMMAL IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN SE ASIA. SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.—Continued

Species	Occurrence in Study Area in SE Asia	Habitat	Regional Population Size	ESA[a]	Density/ 1000km[b] (best)	Density/ 1000km[c] (max)
Killer whale (*Orcinus orca*)	Uncommon?	Widely distributeds	8,500 ETP[e]	NL	1.00	1.73
Short-finned pilot whale (*Globicephala macrorhynchus*)	Common?	Mostly pelagic, relief topography	500,000 ETP[e]	NL	3.83	6.43
Finless porpoise (*Neophocaena phocaenoides*)	Common?	Coastal	5,220-10,220 Japan + HK[e]	NL	4.36	6.54
Sirenians						
Dugong (*Dugong dugon*)	Uncommon?	Coastal	N.A.	EN	N.A.	N.A.

N.A. - Data not available or species status was not assessed, ETP - Eastern Tropical Pacific, HK = Hong Kong
[a] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed
[b] Best estimate as listed in Table 3 of the application.
[c] Maximum estimate as listed in Table 3 of the application.
[d] Vladimirov *et al.* (2008)
[e] North Pacific unless otherwise indicated (Jefferson *et al.*, 2008)
[f] Western North Pacific (Calambokidis et al., 2008)
[g] Northwest Pacific and Okhotsk Sea (IWC, 2007a)
[h] Kitakado et al. (2008)
[i] Tillman (1977)
[j] Ohsumi and Wada (1974)
[k] Western North Pacific (Whitehead, 2002b)
[l] ETP; all Mesoplodon spp. (Wade and Gerrodette, 1993)
[m] IUCN states that this species should be re-assessed following taxonomic classification of the two forms. The chinensis-type would be considered vulnerable (IUCN, 2008)
[n] ETP (Wade and Gerrodette, 1993)

Potential Effects on Marine Mammals

Potential Effects of Airguns

The sounds from airguns might result in one or more of the following: tolerance, masking of natural sounds, behavioral disturbances, temporary or permanent hearing impairment, and non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). With the possible exception of some cases of temporary threshold shift in harbor seals, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term.

The root mean square (rms) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or peak-to-peak decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of approximately 170 to 172 dB, and to a peak-to-peak measurement of approximately 176 to 178 dB, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000a). The precise difference between rms and peak or peak-to-peak values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a summary of the characteristics of airgun pulses, see Appendix B (3) of L-DEO's application. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response-see Appendix B (5) of L-DEO's application. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds usually seem to be more tolerant of exposure to airgun pulses than are cetaceans, with relative responsiveness of baleen and toothed whales being variable.

Masking

Obscuring of sounds of interest by interfering sounds, generally at similar frequencies, is known as masking. Masking effects of pulsed sounds (even from large arrays of airguns) on marine

mammal calls and other natural sounds are expected to be limited, although there are few specific data of relevance. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However in exceptional situations, reverberation occurs for much or all of the interval between pulses (Simard *et al.*, 2005; Clark and Gagnon, 2006). Some baleen and toothed whales are known to continue calling in the presence of seismic pulses. The airgun sounds are pulsed, with quiet periods between the pulses, and whale calls often can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b, 2006). In the northeast Pacific Ocean, blue whale calls have been recorded during a seismic survey off Oregon (McDonald *et al.*, 1995). Among odontocetes, there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico and Caribbean Sea (Smultea *et al.*, 2004; Tyack *et al.*, 2006). Masking effects of seismic pulses are expected to be negligible in the case of the small odontocetes given the intermittent nature of seismic pulses. Dolphins and porpoises commonly are heard calling while airguns are operating (Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b; Potter *et al.*, 2007). Also, the sounds important to small odontocetes are predominantly at much higher frequencies than the airgun sounds, thus further limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses. Masking effects on marine mammals are discussed further in Appendix B (4) of L-DEO's application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal responds to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of ''harassment,'' or affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. This practice potentially overestimates the numbers of marine mammals that are affected in some biologically-important manner.

The sound exposure thresholds that affect marine mammals behaviorally are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, bowhead, and sperm whales and on ringed seals. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales – Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of L-DEO's application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding activities and moving away from the sound source. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have demonstrated that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4–15 km (2.8–9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B(5) of L-DEO's application have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 μPa (rms).

Responses of humpback whales to seismic surveys have been studied during migration, on the summer feeding grounds, and on Angolan winter breeding grounds; there has also been discussion of effects on the Brazilian wintering grounds. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off Western Australia to a full-scale seismic survey with a 16–airgun, 2,678–in^3 array, and to a single 20–in^3 airgun with a source level of 227 dB re 1 μPa m peak-to-peak. McCauley *et al.* (1998) documented that initial avoidance reactions began at 5–8 km (3.1–5 mi) from the array, and that those reactions kept most pods approximately 3–4 km (1.9–2.5 mi) from the operating seismic boat. McCauley *et al.* (2000) noted localized displacement during migration of 4–5 km (2.5–3.1 mi) by traveling pods and 7–12 km (4.3–7.5 mi) by cow-calf pairs. Avoidance distances with respect to the single airgun were smaller (2 km (1.2 mi)) but consistent with the results from the full array in terms of received sound levels. The mean avoidance distance from the airgun corresponded to a received sound level of 140 dB re 1 μPa (rms); that was the level at which humpbacks started to show avoidance reactions to an approaching airgun. The standoff range, i.e., the closest point of approach of the whales to the airgun, corresponded to a received level of 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of 5–8 km (3.1–5 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100–400 m (328–1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.*, 1985). Some humpbacks seemed ''startled'' at received levels of 150–169 dB re 1 ?Pa on an approximate rms basis. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received

levels up to 172 re 1 μPa on an approximate rms basis.

It has been suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.*, 2006), or with results from direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on the activity (migrating vs. feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20–30 km (12.4–18.6 mi) from a medium-sized airgun source at received sound levels of around 120–130 dB re 1 μPa (rms) (Miller *et al.*, 1999; Richardson *et al.*, 1999; see Appendix B (5) of L-DEO's application). However, more recent research on bowhead whales (Miller *et al.*, 2005a; Harris *et al.*, 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing-respiration-dive cycles were evident upon statistical analysis (Richardson *et al.*, 1986). In summer, bowheads typically begin to show avoidance reactions at a received level of about 160–170 dB re 1 μPa (rms) (Richardson *et al.*, 1986; Ljungblad *et al.*, 1988; Miller *et al.*, 2005a).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding Eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. Malme *et al.* (1986, 1988) estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and with observations of Western Pacific gray whales feeding off Sakhalin Island, Russia, when a seismic survey was underway just offshore of their feeding area (Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of Balaenoptera (blue, sei, fin, Bryde's, and minke whales) have occasionally been reported in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, at times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting and not shooting (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei, and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim direction during seismic vs. non-seismic periods (Moulton *et al.*, 2005, 2006a,b).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration and much ship traffic in that area for decades (see Appendix A in Malme *et al.*, 1984; Richardson *et al.*, 1995; Angliss and Outlaw, 2008). The Western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.*, 2007). Bowhead whales continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987). In any event, brief exposures to sound pulses from the proposed airgun source are highly unlikely to result in prolonged effects.

Toothed Whales – Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, systematic studies on sperm whales have been done (Jochens and Biggs, 2003; Tyack *et al.*, 2003; Jochens *et al.*, 2006; Miller *et al.*, 2006), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Weir, 2008).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some avoidance of operating seismic vessels (Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008). However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large airgun arrays are firing (Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales sometimes tend to head away or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of 1 km (0.62 mi) or less, and some individuals show no apparent avoidance. The beluga is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea during summer recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) compared with 20–30 km (mi) from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.*, 2005; Harris *et al.*, 2007).

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005; Finneran and Schlundt, 2004). The animals tolerated high received levels of sound (pk-pk level >200 dB re 1 μPa) before exhibiting aversive behaviors. For pooled data at 3, 10, and 20 kHz, sound exposure levels during sessions with 25, 50, and 75 percent altered behavior were 180, 190, and 199 dB re 1 μPa^2, respectively (Finneran and Schlundt, 2004).

Results for porpoises depend on species. Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005) and, during a survey with a large airgun array, tolerated higher noise levels than did harbor porpoises and gray whales (Bain and Williams, 2006). However, Dall's porpoises do respond to the approach of large airgun arrays by moving away (Calambokidis and Osmek, 1998; Bain and Williams, 2006). The limited available data suggest that harbor porpoises show stronger avoidance (Stone, 2003; Bain and Williams, 2006; Stone and Tasker, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources in general (Richardson *et al.*, 1995; Southall *et al.* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that this species shows considerable tolerance of airgun pulses (Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases, the whales do not show strong avoidance and continue to call (see Appendix B in L-DEO's EA). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging effort is somewhat altered upon exposure to airgun sounds (Jochens *et al.*, 2006).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, northern bottlenose whales (*Hyperodon ampullatus*) continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Laurinolli and Cochrane, 2005; Simard *et al.*, 2005). Most beaked whales tend to avoid approaching vessels of other types (Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (Kasuya, 1986). It is likely that these beaked whales would normally show strong avoidance of an approaching seismic vessel, but this has not been documented explicitly.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of L-DEO's EA).

Additional details on the behavioral reactions (or the lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix B of L-DEO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses.

NMFS will be developing new noise exposure criteria for marine mammals that take account of the now-available scientific data on temporary threshold shift (TTS), the expected offset between the TTS and permanent threshold shift (PTS) thresholds, differences in the acoustic frequencies to which different marine mammal groups are sensitive, and other relevant factors. Detailed recommendations for new science-based noise exposure criteria were published in early 2008 (Southall *et al.*, 2007).

Several aspects of the planned monitoring and mitigation measures for this project (see below) are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment. In addition, many cetaceans and (to a limited degree) pinnipeds are likely to show some avoidance of the area with high received levels of airgun sound (see above). In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal and the proposed monitoring and mitigation measures (see below). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift – TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002, 2005). Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB re 1 $\mu Pa^2 \bullet s$ (i.e., 186 dB SEL or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong seismic pulses that each have received levels near 175–180 dB SEL might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. The distance from the *Langseth*'s airguns at which the received energy level (per pulse) would be expected to be ≥175–180 dB SEL are the distances shown in the 190 dB re 1 μPa (rms) column in Table 3 of L-DEO's application and Table 1 above (given that the rms level is approximately 10–15 dB higher than the SEL value for the same pulse). Seismic pulses with received energy levels ≥175–180 dB SEL (190 dB re 1 μPa (rms)) are expected to be restricted to radii no more than 140–200 m (459–656 ft) around the airguns. The specific radius depends on the number of airguns, the depth of the water, and the tow depth of the airgun array. For an odontocete closer to the surface, the maximum radius with

≥175–180 dB SEL or ≥190 dB re 1 μPa (rms) would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin and beluga. There is not published TTS information for other species of cetaceans. However, preliminary evidence from harbor porpoise exposed to airgun sound suggests that its TTS threshold may have been lower (Lucke *et al.*, 2007).

For baleen whales, there are no data, direct or indirect, on levels or properties of sound required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those for odontocetes, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. In any event, no cases of TTS are expected given three considerations: (1) the relatively low abundance of baleen whales expected in the planned study areas; (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS; and (3) the mitigation measures that are planned.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged (non-pulse) exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999, 2005; Ketten *et al.*, 2001; Au *et al.*, 2000). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \bullet s$ (Southall *et al.*, 2007), which would be equivalent to a single pulse with received level approximately 181–186 re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.*, 2005).

A marine mammal within a radius of less than 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of greater than or equal to 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. (As noted above, most cetacean species tend to avoid operating airguns, although not all individuals do so.) In addition, ramping up airgun arrays, which is standard operational protocol for large airgun arrays, should allow cetaceans to move away form the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that the cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. The potential for TTS is much lower in this project. With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. If some cetaceans did incur TTS through exposure to airgun sounds, this would very likely be mild, temporary, and reversible.

To avoid the potential for injury, NMFS has determined that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes (and probably mysticetes as well) are exposed to airgun pulses stronger than 180 dB re 1 μPa (rms).

Permanent Threshold Shift – When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time (see Appendix B (6) of L-DEO's application). The specific difference between the PTS and TTS thresholds has not been measured for marine mammals exposed to any sound type. However, based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis.

On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans they estimate that the PTS threshold might be a cumulative SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu Pa^2 \bullet s$. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds. Southall *et al.* (2007) estimate that the PTS threshold could be a cumulative SEL of approximately 186 dB 1 $\mu Pa^2.s$ in the harbor seal; for the California sea lion and northern elephant seal the PTS threshold would probably be higher. Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped receives one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa (3.2 bar.m, 0–pk), which would only be found within a few meters of the largest (360–in^3) airguns in the planned airgun array (Caldwell and Dragoset, 2000). A peak pressure of 218 dB re 1 μPa could be received somewhat farther away; to estimate that specific distance, one would need to apply a model that accurately calculates peak pressures in the near-field around an array of airguns.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur. In fact, even the levels immediately adjacent to the airguns may not be sufficient to induce PTS, especially because a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside the airgun for a period longer than the inter-pulse interval. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. The planned monitoring and mitigation measures, including visual monitoring, passive acoustic monitoring (PAM), power downs, and shut downs of the airguns when mammals are seen within the EZ will minimize the already minimal probability of exposure of marine

mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects – Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). However, studies examining such effects are limited. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods, when sound is strongly channeled with less-than-normal propagation loss, or when dispersal of the animals is constrained by shorelines, shallows, etc. Airgun pulses, because of their brevity and intermittence, are less likely to trigger resonance or bubble formation than are more prolonged sounds. It is doubtful that any single marine mammal would be exposed to strong seismic sounds for time periods long enough to induce physiological stress.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. This possibility was first explored at a workshop (Gentry [ed.], 2002) held to discuss whether a stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to bubble formation in tissues caused by exposure to noise from naval sonar. However, this link could not be confirmed. Jepson *et al.* (2003) first suggested a possible link between mid-frequency sonar activity and acute chronic tissue damage that results from the formation *in vivo* of gas bubbles, based on a beaked whale stranding in the Canary Islands in 2002 during naval exercises. Fernandez *et al.* (2005a) showed those beaked whales did indeed have gas bubble-associated lesions, as well as fat embolisms. Fernandez *et al.* (2005b) also found evidence of fat embolism in three beaked whales that stranded 100 km (62 mi) north of the Canaries in 2004 during naval exercises. Examinations of several other stranded species have also revealed evidence of gas and fat embolisms (Arbelo *et al.*, 2005; Jepson *et al.*, 2005a; Mendez *et al.*, 2005). Most of the afflicted species were deep divers. There is speculation that gas and fat embolisms may occur if cetaceans ascend unusually quickly when exposed to aversive sounds, or if sound in the environment causes the destabilization of existing bubble nuclei (Potter, 2004; Arbelo *et al.*, 2005; Fernandez *et al.* 2005a; Jepson *et al.*, 2005b; Cox *et al.*, 2006). Even if gas and fat embolisms can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to within short distances of the sound source and probably to projects involving large arrays of airguns. The available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects. It is not known whether aversive behavioral responses to airgun pulses by deep-diving species could lead to indirect physiological problems as apparently can occur upon exposure of some beaked whales to mid-frequency sonar (Cox *et al.*, 2006). Also, the planned mitigation measures, including shut downs of the airguns, will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and their auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Appendix B of L-DEO's application provides additional details.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality (Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.*, 2003; Fernandez *et al.*, 2004, 2005a; Cox *et al.*, 2006), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

There is no conclusive evidence of cetacean strandings as a result of exposure to seismic surveys. Speculation concerning a possible link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.*, 2004) was not well founded based on available data (IAGC, 2004; IWC, 2006). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L-DEO vessel R/V *Maurice Ewing* (*Ewing*) was operating a 20–gun, 8,490–in^3 array in the general area. The link between the stranding and the seismic survey was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution when conducting seismic surveys in areas occupied by beaked whales. No injuries of beaked whales are anticipated during the proposed study because of (1) the high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, (2) the proposed monitoring and mitigation measures, and (3) differences between the sound sources operated by L-DEO and those involved in the naval exercises associated with strandings.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder Signals

The Simrad EM 120 12–kHz MBES will be operated from the source vessel at some times during the planned study. Sounds from the MBES are very short pulses, occurring for 2–15 ms once every 5–20 s, depending on water depth. Most of the energy in the sound pulses emitted by the MBES is at frequencies centered at 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of nine successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the MBES are unlikely to be subjected to repeated pulses because of

the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2–15 ms pulse (or two pulses if in the overlap area). Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order in order to receive the multiple pulses that might result in sufficient exposure to cause TTS. Burkhardt *et al.* (2007) concluded that immediate direct auditory injury was possible only if a cetacean dived under the vessel into the immediate vicinity of the transducer.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally have a longer pulse duration that the Simrad EM120, and (2) are often directed close to horizontally vs. more downward for the MBES. The area of possible influence of the MBES is much smaller- a narrow band below the source vessel. The duration of exposure for a given marine mammal can be much longer for a Navy sonar.

Marine mammal communications will not be masked appreciably by the MBES signals given its low duty cycle and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral reactions of free-ranging marine mammals to sonars and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21–25 kHz whale-finding sonar with a source level of 215 dB re 1 μPa, gray whales showed slight avoidance (approximately 200 m or 656 ft) behavior (Frankel, 2005). However, all of those observations are of limited relevance to the present situation. Pulse durations from those sonars were much longer than those of the MBES, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s pulsed sounds at frequencies similar to those that will be emitted by the MBES used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from an MBES.

L-DEO is not aware of any data on the reactions of pinnipeds to sonar or echosounder sounds at frequencies similar to the 12 kHz frequency of the *Langseth*'s MBES. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the MBES sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES are not likely to result in the harassment of marine mammals.

Sub-bottom Profiler Signals

A SBP will be operated from the source vessel during the planned study. Sounds from the SBP are very short pulses, occurring for 1- 4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at mid frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 μPam. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Marine mammal communications will not be masked appreciably by the SBP signals given their directionality and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most odontocetes, the signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. The pulsed signals from the SBP are somewhat weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The precautionary nature of these criteria is discussed in Appendix B (6) of L-DEO's application, including the fact that the minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS and the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage. NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment.

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An SBP will be operated from the source vessel at times during the planned study. Sounds from the sub-bottom profiler are very short pulses, occurring for 1–4 ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. The SBP on the *Langseth* has a maximum source level of 204 dB re 1 μPam. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at

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Possible Effects of Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies of 9–13 kHz. These signals will be used very intermittently. It is unlikely that the acoustic release signals would have significant effects on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumable low levels.

Estimated Take by Incidental Harassment

All anticipated takes would be ''takes by harassment,'' involving temporary changes in behavior. The proposed mitigation measures are expected to minimize the possibility of injurious takes. (However, as noted earlier, there is no specific information demonstrating that injurious ''takes'' would occur even in the absence of the planned mitigation measures.) The sections below describe methods to estimate ''take by harassment'', and present estimates of the numbers of marine mammals that might be affected during the proposed TAIGER seismic program. The estimates of ''take by harassment'' are based on consideration of the number of marine mammals that might be disturbed appreciably by operations with the 36 airgun array to be used during approximately 15,902 km of seismic surveys in the waters of the SE Asia study area. The main sources of distributional and numerical data used in deriving the estimates are described below.

Empirical data concerning 190, 180, 170, and 160 dB re 1 μPa isopleth distances in deep and shallow water were acquired for various airgun configurations during the acoustic calibration study of the *Ewing*'s 20–airgun 8,600 in^3 array in 2003 (Tolstoy *et al.*, 2004a,b). The results showed that radii around the airguns where the received level was 180 dB re 1 μPa rms, the threshold for estimating Level B harassment applicable to cetaceans (NMFS, 2000), varied with water depth. Similar depth-related variation is likely for the 190–dB re 1 μPa threshold for estimating Level B harassment applicable to cetaceans and the 190–dB re 1 μPa threshold applicable to pinnipeds, although these were not measured. The L-DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water and to relatively short ranges.

The empirical data indicated that, for deep water (>1,000 m; 3,280 ft), the L-DEO model (as applied to the *Ewing*'s airgun configurations) overestimated the measured received sound levels at a given distance (Tolstoy *et al.*, 2004a,b). However, to be conservative, the distances predicted by L-DEO's model for the survey will be applied to deep-water areas during the proposed study (see Figure 3 and 4 and Table 1 in the application). As very few, if any, mammals are expected to occur deeper than 2,000 m (6,562 ft), this depth was used as the maximum relevant depth.

Empirical measurements of sounds from the *Ewing*'s airgun arrays were not conducted for intermediate depths (100–1,000 m; 328–3,280 ft). On the expectation that results would be intermediate, the estimates provided by the model for deep-water situations are used to obtain estimates for intermediate-depth sites. Corresponding correction factors, applied to the modeled radii for the *Langseth*'s airgun configuration, will be used during the proposed study for intermediate depths (see Table 1 of the application).

Empirical measurements near the Ewing indicated that in shallow water (<100 m; 328 ft), the L-DEO model underestimates actual levels. In previous L-DEO projects, the exlusion zones were typically based on measured values and ranged from 1.3 to 15 times higher than the modeled values depending on the size of the airgun array and the sound level measured (Tolstoy *et al.*, 2004b). During the proposed cruise, similar correction factors will be applied to derive appropriate shallow-water radii from the modeled deep-water radii for the *Langseth*'s airgun configuration (see Table 1 of L-DEO's application).

Using the modeled distances and various correction factors, Table 1 (from L-DEO's application) shows the distances at which 4 rms sound levels are expected to be received from the 36–airgun array and a single airgun in three different water depths.

The anticipated radii of influence of the MBES and the SBP are much smaller than those for the airgun array. It is assumed that, during simultaneous operations of the airgun array and echosounders, marine mammals close enough to be affected by the echosounders would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the echosounders, marine mammals are not expected to be exposed to sound pressure levels great enough or long enough for taking to occur given echosounders' characteristics (e.g., narrow downward-directed beam) and other considerations described above. Therefore, no additional allowance is included for

animals that might be affected by sound sources other than airguns

No systematic aircraft- or ship-based surveys have been conducted for marine mammals in waters near Taiwan, and the species of marine mammals that occur there are not well known. A few surveys have been conducted from small vessels (approximately 10–12 m or 33–40 ft long) with low observation platforms (approximately 3 m or 10 ft above sea level) as follows:

- Off the east central coast of Taiwan to a maximum of approximately 20 km (12.4 mi) from shore in water depths up to approximately 1,200 m deep between June 1996 and July 1997 (all cetacean; Yang *et al.*, 1999);
- Off the south coast of Taiwan to a distance of approximately 50 km (mi) and depths greater than 1,000 m (3,280 ft) during April 13–September 9, 2000 (all cetaceans; Wang *et al.*, 2001a);
- Off the west coast of Taiwan close to shore during early April-early August, 2002–2006 (Indo-Pacific humpback dolphins; Wang *et al.*, 2007); and
- Around and between the Babuyan Islands off northern Philippines in waters less than 1,000 m deep during late February-May 2000–2003 (humpback whales; Acebes *et al.*, 2007).

The only density calculated by the authors was for the Indo-Pacific humpback dolphin (Wang *et al.*, 2007). In addition, a density estimate was also available for the Indo-Pacific bottlenose dolphin (Yang *et al.*, 2000 in Perrin *et al.*, 2005).

In the absence of any other density data, L-DEO used the survey effort and sightings in Yang *et al.* (1999) and Wang *et al.* (2001a) to estimate densities of marine mammals in the TAIGER study area. To correct for detection bias (bias associated with diminishing sightability with increasing lateral distance from the trackline), L-DEO used mean group sizes given by or calculated from Wang *et al.* (2001a, 2007) and Yang *et al.*, (1999), and a value for $f(0)$ of 5.32 calculated from the data and density equation in Wang *et al.* (2007); Yang *et al.* (1999), and Wang *et al.* (2001a) did not give a value for $f(0)$, but they used a vessel and methods similar to those of Wang *et al.* (2007). To correct for availability and perception bias, which are attributable to the less than 100 percent probability of sighting an animals present along the survey trackline, L-DEO used g(0) values calculated using surfacing and dive data from Erickson (1976), Barlow and Sexton (1996), Forney and Barlow (1998), and Barlow (1999): 0.154 for *Mesoplodon* sp., 0.102 for Cuvier's beaked whale, 0.193 for the dwarf sperm whale and *Kogia* sp., 0.238 for the killer whale, and 1.0 for delphinids.

The surveys of Yang *et al.* (1999) and Wang *et al.* (2001a) were carried out in areas of steep slopes and complex bathymetric features, where many cetacean species are known to concentrate. It did not seem reasonable to extrapolate those densities to the overall survey area, which is predominantly in areas of deep water without complex bathymetry. For latter areas, L-DEO used density data from two 5° x 5° blocks in the eastern tropical Pacific Ocean (ETP) surveyed by Ferguson and Barlow (2001): Blocks 87 and 88[2], bounded by 20° N–25° N (the same latitudes as the proposed survey area and 115° W–125 W, in deep water and just offshore from Mexico. L-DEO then calculated an overall estimate weighted by the estimated lengths of seismic lines over complex bathymetry or slope (approximately 1,250 km or 777 mi) and over deep, flat, or gently sloping bottom (approximately 14,652 km or 9,104 mi).

The density estimate for the Indo-Pacific hump-backed dolphin is from Wang *et al.* (2007) and applies only to the population's limited range on the west coat of Taiwan. No density data were available for the Pacific white-sided or short-beaked common dolphin for the study area. As these species are rare in the area, densities are expected to be near zero. In addition, density data were unavailable for striped and long-beaked common dolphins. As these two species were not seen during the above-mentioned surveys and are considered uncommon in the TAIGER study area, L-DEO assigned these two species 10 percent of the density estimate of the delphinid occurring in similar habitat in the area with the lowest density (i.e., pygmy killer whale). Also no density estimate was available for finless porpoise. As this species was not sighted during surveys of southern Taiwan in 2000 (Wang *et al.*, 2001a), L-DEO assigned it 10 percent of the lowest density (i.e., Indo-Pacific bottlenose dolphin). Density data were unavailable for Longman's beaked and ginkgo-toothed beaked whales; however, these two species are represented by densities for unidentified beaked whales.

Large whales were not sighted during the surveys by Yang *et al.* (1999) or Wang *et al.* (2001a). The only available abundance estimate for large whales in the area (except that for humpbacks, see below) is that of Shimada *et al.* (2008), who estimated abundances of Bryde's whales in several blocks in the northwestern Pacific based on surveys in 1998–2002, the closest of which to the proceed survey area is the block bounded by 10° N–25° N and 130° E–137.5° E. The resulting abundance and area were used to calculate density. Sperm, sei, Omura's, fin, minke, and blue whales are less common than Bryde's whales in these waters, so L-DEO assigned a density of 10 percent of that calculated for Bryde's whale. North Pacific right, and Western North Pacific gray whales are unlikely to occur in the TAIGER study area, thus, densities were estimated to be zero.

For humpback whales in the Babuyan Islands, L-DEO used the population estimate of Acebes *et al.* (2007) and applied it to an area of approximately 78,000 km[2], extending from the north coast of Luzon to just south of Orchid Island to derive a density estimate. That area is a historically well-documented breeding ground that whaling records indicate was used until at least the 1960s (Acebes *et al.*, 2007), and an area where humpbacks have been sighted more recently.

There is some uncertainty about the representatives of the density data and the assumptions used in the calculations. For example, the timing of the surveys of Indo-Pacific humpback dolphins (early April-early August) and humpback whales (late February-May) overlaps the timing of the proposed surveys, but the Bryde's whale surveys (August and September), and those of Yang *et al.* (1999) (year-round) include different seasons, and would not be as representative if there are seasonal density differences. Perhaps the greatest uncertainty results from using survey results from the northeast Pacific Ocean. However, the approach used here is believed to be the best available approach. Also, to provide some allowance for these uncertainties, ''maximum estimates'' as well as ''best estimates'' of the densities present and numbers of marine mammals potentially affected have been derived. Best estimates for most species are based on average densities from the surveys of Yang *et al.* (1999), Wang *et al.* (2001a), and Ferguson and Barlow (2001), weighted by effort, whereas maximum estimates are based on the higher of the two densities from the Taiwan surveys and the eastern Pacific survey blocks. For the sperm whales, mysticetes, two delphinids (Indo-Pacific humpback and Indo-Pacific bottlenose dolphins), as well as for the finless porpoise, the maximum estimates are the best estimates multiplied by 1.5. Densities calculated or estimated as described above are given in Table 3 of L-DEO's application.

The estimated numbers of individuals potentially exposed on each leg of the survey are based on the 160 dB re 1 μPa

(rms) Level B harassment exposure threshold for cetaceans and pinnipeds. It is assumed that marine mammals exposed to airgun sounds at these levels might experience disruption of behavioral patterns.

It should be noted that the following estimates of takes by harassment assume that the surveys will be fully completed. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-km to seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZ will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals exposed to 160–dB sounds probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

The number of different individuals that may be exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160–dB radius around the operating airgun array on at least one occasion. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaces in the survey area, and are further spaced in time because the proposed survey, the seismic lines are widely spaced in the survey area, and are further spaced in time because the proposed survey is planned in discrete legs separated by several days. Thus, an individual mammal would not be exposed numerous times during the survey; the areas including overlap are 1.1–1.3 times the areas excluding overlap, depending on the leg, so the numbers of exposures are not discussed further. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density, either ''mean'' (i.e., best estimate) or ''maximum,'' times
- The anticipated minimum area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by ''drawing'' the applicable 160–dB buffer around each seismic line (depending on water and tow depth) and then calculating the total area within the buffers. Areas where overlap occurred were limited and included only once to determine the area expected to be ensonified when estimating the number of individuals exposed.

Applying the approach described above, approximately 168,315 km^2 (104,586 mi^2) would be within the 160–dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

TABLE 3. THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING L-DEO'S PROPOSED SEISMIC SURVEY IN SE ASIA IN MARCH-JULY 2009. THE PROPOSED SOUND SOURCE CONSISTS OF A 36-AIRGUN, 6,600 IN3, ARRAY. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.

Species	# of Individuals Exposed (best)[1]	# of Individuals Exposed (max)[1]	Approx. % Regional Population (best) [2]
Mysticetes			
Western North Pacific gray whale (*Eschrichtius robustus*)	0	0	0
Western North Pacific right whale (*Eubalaena japonica*)	0	0	0
Humpback whale (*Megaptera novaeangliae*)	10	14	0.94
Minke whale (*Balaenoptera acutorostrata*)	5	8	0.02
Bryde's whale (*Balaenoptera brydei*)	51	77	020
Omura's whale (*Balaenoptera omurai*)	5	8	N.A.
Sei whale (*Balaenoptera borealis*)	5	8	0.05
Fin whale (*Balaenoptera physalus*)	5	8	0.03

TABLE 3. THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING L-DEO'S PROPOSED SEISMIC SURVEY IN SE ASIA IN MARCH-JULY 2009. THE PROPOSED SOUND SOURCE CONSISTS OF A 36-AIRGUN, 6,600 IN3, ARRAY. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.—Continued

Species	# of Individuals Exposed (best)[1]	# of Individuals Exposed (max)[1]	Approx. % Regional Population (best) [2]
Blue whale (*Balaenoptera musculus*)	5	8	N.A.
Mysticetes			
Sperm whale (*Physeter macrocephalus*)	5	8	0.02
Pygmy sperm whale (*Kogia breviceps*)	0	0	N.A.
Dwarf sperm whale (*Kogia sima*)	806	1267	7.19
Kogia sp.	49	76	N.A.
Cuvier's beaked whale (*Ziphius cavirostris*)	64	143	0.32
Longman's beaked whale (*Indopacetus pacificus*)	0	0	N.A.
Blainville's beaked whale (*Mesoplodon densirostris*)	168	303	0.66
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*)	0	0	N.A.
Mesoplodon sp. (unidentified) [3]	294	303	1.16
Unidentified beaked whale [4]	137	178	N.A.
Rough-toothed dolphin (*Steno bredanensis*)	252	1,031	0.17
Indo-Pacific humpback dolphin (*Sousa chinensis*)	68	99	4.03
Common bottlenose dolphin (*Tursiops truncatus*)	4,606	6,704	1.89
Indo-Pacific bottlenose dolphin (*Tursiops aduncus*)	677	6,704	N.A.
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)	0	0	0
Pantropical spotted dolphin (*Stenella attenuata*)	22,902	26,726	2.86
Spinner dolphin (*Stenella longirostris*)	10,397	16,835	1.30
Striped dolphin (*Stenella coeruleoalba*)	38	60	0.01
Fraser's dolphin (*Lagenodelphis hoseia*)	18,359	23,534	6.35
Short-beaked common dolphin (*Delphinus delphis*)	0	0	0
Long-beaked common dolphin (*Delphinus capensis*)	10	23	0.01

TABLE 3. THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING L-DEO'S PROPOSED SEISMIC SURVEY IN SE ASIA IN MARCH-JULY 2009. THE PROPOSED SOUND SOURCE CONSISTS OF A 36-AIRGUN, 6,600 IN3, ARRAY. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 2-4 IN L-DEO'S APPLICATION FOR FURTHER DETAIL.—Continued

Species	# of Individuals Exposed (best)[1]	# of Individuals Exposed (max)[1]	Approx. % Regional Population (best) [2]
Risso's dolphin (*Grampus griseus*)	7,940	12,736	4.54
Melon-headed whale (*Peponocephala electra*)	2,534	3,954	5.63
Pygmy killer whale (*Feresa attenuata*)	380	599	0.98
I killer whale (*Pseudorca crassidens*)	865	905	2.16
Killer whale (*Orcinus orca*)	189	329	2.23
Short-finned pilot whale (*Globicephala macrorhynchus*)	727	1,220	0.15
Finless porpoise (*Neophocaena phocaenoides*)	68	101	0.66
Sirenians			
Dugong (*Dugong dugon*)	0	0	N.A.

N.A. - Data not available or species status was not assessed
[1] Best estimate and maximum estimate density are from Table 3 of L-DEO's application. There will be no seismic acquisition data during Leg 3 of the survey; this, it is not included here in this table.
[2] Regional population size estimates are from Table 2.
[3] Requested takes include Blainville's, and ginkgo-toothed beaked whales.
[4] Requested takes include Cuvier's, Blainville's, ginkgo-toothed, and Longman's beaked whales.

Table 4 of L-DEO's application shows the best and maximum estimates of the number of exposures and the number of individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the different legs of the seismic survey if no animals moved away from the survey vessel.

The ''best estimate'' of the number of individual marine mammals that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) (but below Level A harassment thresholds) during the survey is shown in Table 4 of L-DEO's application and Table 3 (shown above). The ''best estimate'' total includes 86 baleen whale individuals, 25 of which are listed as Endangered under the ESA: 10 humpback whales (0.94 percent of the regional population), 5 sei whales (0.05 percent), 5 fin whales (0.03 percent), and 5 blue whales (regional population unknown). These estimates were derived from the best density estimates calculated for these species in the area (see Table 4 of L-DEO's application). In addition, 5 sperm whales (0.02 percent of the regional population) as well as 68 Indo-Pacific humpback dolphins (4.03 percent population, but 68.7 percent of the eastern Taiwan Strait (ETC) population), 68 finless porpoise (0.7 percent), and 663 beaked whales including Longman's and ginkgo-toothed beaked whales. Most (97.7 percent) of the cetaceans potentially exposed are delphinids; pantropical spotted, Fraser's, and spinner dolphins are estimated to be the most common species in the area, with best estimates of 22,902 (2.86 percent of the regional population), 18,359 (6.35 percent), and 10,397 (1.3 percent) exposed to greater or equal to 160 dB re μPa (rms) respectively.

Potential Effects on Marine Mammal Habitat

The proposed L-DEO seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as described above. The following sections briefly review effects of airguns on fish and invertebrates, and more details are included in L-DEO's application and EA, respectively.

Potential Effects on Fish and Invertebrates

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is very limited (see Appendix D of L-DEO's EA). There are three types of potential effects on fish and invertebrates from exposure to seismic surveys: (1) pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent

changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes potentially could lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because ultimately, the most important aspect of potential impacts relates to how exposure to seismic survey sound affects marine fish populations and their viability, including their availability to fisheries.

The following sections provide a general synopsis of available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects – The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix D of L-DEO's EA). For a given sound to result in hearing loss, the sound must exceed, by some specific amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population is unknown; however, it likely depends on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as we know, there are only two valid papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns with adverse anatomical effects. One such study indicated anatomical damage and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of ''pink snapper'' (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost 2 months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in 2 of 3 fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coreogonus nasus*) that received a sound exposure level of 177 dB re 1 μPa^2.s showed no hearing loss. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airgun arrays [less than approximately 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1951; Wardle *et al.*, 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.*, 2002). Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a, 2000b; Bjarti, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005).

Except for these two studies, at least with airgun-generated sound treatments, most contributions rely on rather subjective assays such as fish ''alarm'' or ''startle response'' or changes in catch rates by fishers. These observations are important in that they attempt to use the levels of exposures that are likely to be encountered by most free-ranging fish in actual survey areas. However, the associated sound stimuli are often poorly described, and the biological assays are varied (Hastings and Popper, 2005).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish and invertebrates would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b, 2003; Bjarti, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.*, 1996; Dalen *et al.*, 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects – Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and

secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.*, 1994; McCauley *et al.*, 2000a, 2000b). The periods necessary for the biochemical changes to return to normal are variable, and depend on numerous aspects of the biology of the species and of the sound stimulus (see Appendix D of L-DEO's EA).

Summary of Physical (Pathological and Physiological) Effects – As indicated in the preceding general discussion, there is a relative lack of knowledge about the potential physical (pathological and physiological) effects of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on egg, larval, juvenile, and adult stages at very close range. Considering typical source levels associated with commercial seismic arrays, close proximity to the source would result in exposure to very high energy levels. Whereas egg and larval stages are not able to escape such exposures, juveniles and adults most likely would avoid it. In the case of eggs and larvae, it is likely that the numbers adversely affected by such exposure would not be that different from those succumbing to natural mortality. Limited data regarding physiological impacts on fish and invertebrates indicate that these impacts are short term and are most apparent after exposure at close range.

The proposed seismic program for 2009 is predicted to have negligible to low physical effects on the various stags of fish and invertebrates for its relatively short duration (approximately 103 days) and unique survey lines extent. Therefore, physical effects of the proposed program on fish and invertebrates would not be significant.

Behavioral Effects – Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Santulli *et al.*, 1999; Wardle *et al.*, 2001; Hassel *et al.*, 2003). Typically, in these studies fish exhibited a sharp ''startle'' response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the ''catchability'' of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; L kkeborg, 1991; Skalski *et al.*, 1992; Engas *et al.*, 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.*, 1994; La Bella *et al.*, 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, e.g., a change in vertical or horizontal distribution, as reported in Slotte *et al.*, (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

For marine invertebrates, behavioral changes could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies of squid indicated startle responses (McCauley *et al.*, 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.*, 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.*, 2005). Parry and Gason (2006) reported no changes in rock lobster CPUE during or after seismic surveys off western Victoria, Australia, from 1978–2004. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method). Additional information regarding the behavioral effects of seismic on invertebrates is contained in Appendix D in NSF's EA

Summary of Behavioral Effects – As is the case with pathological and physiological effects of seismic on fish and invertebrates, available information is relatively scant and often contradictory. There have been well-documented observations of fish and invertebrates exhibiting behaviors that appeared to be responses to exposure to seismic energy (i.e., startle response, change in swimming direction and speed, and change in vertical distribution), but the ultimate importance of those behaviors is unclear. Some studies indicate that such behavioral changes are very temporary, whereas others imply that fish might not resume pre-seismic behaviors or distributions for a number of days. There appears to be a great deal of inter- and intra-specific variability. In the case of finfish, three general types of behavioral responses have been identified: startle, alarm, and avoidance. The type of behavioral reaction appears to depend on many factors, including the type of behavior being exhibited before exposure, and proximity and energy level of sound source.

During the proposed study, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. The proposed seismic program is predicted to have negligible to low behavioral effects on the various life stages of the fish and invertebrates during its relatively short duration and extent.

Because of the reasons noted above and the nature of the proposed activities, the proposed operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks. Similarly, any effects to food sources are expected to be negligible.

Subsistence Activities

There is no legal subsistence hunting for marine mammals in the waters of Taiwan, China, or the Philippines, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users. Today, Japan still hunts whales and dolphins for ''scientific'' purposes. Up until 1990, a drive fishery of false killer whales occurred in the Penghu Islands, Taiwan, where dozens of whales were taken. Although killing and capturing of cetaceans has been prohibited in Taiwan since August 1990 under the Wildlife Conservation Law (Zhou *et al.*, 1995; Chou, 2004), illegal harpooning still occurs (Perrin *et al.*, 2005). Until the 1990's, there was a significant hunt of around 200 to 300 dolphins annually in the Philippines. Catches included dwarf sperm, melon-headed, and short-finned pilot whales, as well as bottlenose, spinner, Fraser's, and Risso's dolphins (Rudolph and Smeenk, 2002). Reports also indicate that perhaps 5 Bryde's whales were caught annually (Rudolph and Smeenk, 2002), although the last Bryde's whales were caught in 1996 (Reeves, 2002). Successive bans on

the harvesting of whales and dolphins were issued by the Philippine Government during the 1990's.

Proposed Mitigation and Monitoring

Mitigation and monitoring measures proposed to be implemented for the proposed seismic survey have been developed and refined during previous L-DEO seismic studies and associated environmental assessments (EAs), IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures that will be adopted during the proposed TAIGER survey include: (1) speed or course alteration, provided that doing so will not compromise operational safety requirements; (2) power-down procedures; (3) shut-down procedures; (4) ramp-up procedures; (5) spatial and temporal avoidance of sensitive species and areas, provided that doing so will not compromise operational safety requirements; and (6) special procedures for situations or species of concern, e.g., emergency shutdown procedures if a North Pacific right whale or a Western Pacific gray whale is sighted from any distance (see ''shut-down procedures'' and ''special procedures for species of concern,'' below) and minimization of approaches to slopes and submarine canyons, if possible, because of sensitivity for beaked whales. The thresholds for estimating take are also used in connection with proposed mitigation.

Vessel-based Visual Monitoring

Marine Mammal Visual Observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during start-ups of airguns at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shutdown of the airguns. When feasible MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of sighting rates and animal behavior with vs. without airgun operations. Based on MMVO observations, the airguns will be powered down, or if necessary, shut down completely (see below), when marine mammals are detected within or about to enter a designated EZ. The MMVOs will continue to maintain watch to determine when the animal(s) are outside the safety radius, and airgun operations will not resume until the animal has left that zone. The predicted distances for the safety radius are listed according to the sound source, water depth, and received isopleths in Table 1.

During seismic operations in SE Asia, at least 3 MMVOs will be based aboard the *Langseth*. MMVOs will be appointed by L-DEO with NMFS concurrence. At least one MMVO and when practical two, will monitor the EZ for marine mammals during ongoing daytime operations and nighttime startups of the airguns. Use of two simultaneous MMVOs will increase the effectiveness of detecting animals near the sound source. MMVO(s) will be on duty in shift of duration no longer than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation measures (if practical). Before the start of the seismic survey the crew will be given additional instruction regarding how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 18 m (58 ft) above sea level, and the observer will have a good view around the entire vessel. During the daytime, the MMVO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye. During darkness, night vision devices will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training MMVOs to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles on the binocular's lenses.

Speed or Course Alteration – If a marine mammal is detected outside the safety radius and based on its position and the relative motion, is likely to enter the EZ, the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal(s) (relative to the seismic vessel) will then be closely monitored to determine whether the animal(s) is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigative actions will be taken, i.e., either further course alterations or a power-down or shut-down of the airguns. Typically, during seismic operations, major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, thus alternative mitigation measures (see below) will need to be implemented.

Power-down Procedures – A power-down involves reducing the number of airguns in use such that the radius of the of the 180 dB or 190 dB zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, one airgun will be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the EZ but is likely to enter it, and if the vessel's speed and/or course cannot be changed to avoid the animal(s) entering the EZ, the airguns will be powered down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered down immediately. During a power-down of the airgun array, the 40 in^3 airgun will be operated. If a marine mammal is detected within or near the smaller EZ around that single airgun (see Table 1 of L-DEO's application and Table 1 above), all airguns will be shut down (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ, or

(2) Has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds; or

(3) Has not been seen within the EZ for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down (or shut-down) whose duration has exceeded the limits specified above and subsequent animal departures, the airgun array will be ramped-up gradually. Ramp-up procedures are described below.

Shut-down Procedures – The operating airguns(s) will be shut-down if a marine mammal is detected within

or approaching the EZ for a single airgun source. Shut-downs will be implemented (1) if an animal enters the EZ of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the EZ of a single airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the EZ, or until the MMVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection.

Considering the conservation status for North Pacific right whales and Western North Pacific gray whales, the airgun(s) will be shut down immediately if either of these species are observed, regardless of the distance from the *Langseth*. Ramp-up will only begin if the right or gray whale has not been seen for 30 min.

Ramp-up Procedures – A ramp-up procedure will be followed when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. It is proposed that, for the present cruise, this period would be approximately 8 minutes. This period is based on the largest modeled 180 dB radius for the 36–airgun array (see Table 1 of L-DEO's application and Table 1 here) in relation to the planned speed of the *Langseth* while shooting. Similar periods (approximately 8–10 minutes) were used during previous L-DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 35 minutes. During ramp-up, the MMVOs will monitor the EZ, and if marine mammals are sighted, a course/speed change, power-down, or shut-down will be implemented as though the full array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the other part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable EZ during the day or close to the vessel at night.

Temporal and Spatial Avoidance – The *Langseth* will not acquire seismic data in the humpback winter concentration areas during the early part of the seismic program, if practicable. North Pacific humpback whales are known to winter and calve around Ogasawara and Ryuku Islands in southern Japan and in the Babuyan Islands in Luzon Strait in the northern Philippines (Perry *et al.*, 1999a; Acebes *et al.*, 2007; Calambokidis *et al.*, 2008). In the Luzon Strait, the whales may arrive in the area as early as November and leave in May or even June, with a peak occurrence during February through March or April (Acebes *et al.*, 2007). The *Langseth* will attempt to avoid these wintering areas at the time of peak occurrence, by surveying the lines near the Ryuku Islands and Babuyan Islands as late as possible during each leg of the cruise.

Due to the conservation status of Indo-Pacific humpback dolphins in Taiwan Strait, seismic operations will not occur in water depths less than 20 m (65.6 ft) and within at least 2 km (1.2 mi) from the Taiwanese shore. Also, when possible, seismic surveying will only take place at least 8–10 km (5–6.2 mi) from the Taiwanese coast, particularly the central western coast (approximately from Taixi to Tongshiao), to minimize the potential of exposing these threatened dolphins to SPLs greater than 160 dB re 1 μPa (rms).

Procedures for Species of Concern – Several species of concern could occur in the study area. Special mitigation procedures will be used for these species as follows:

(1) The airguns will be shut down if a North Pacific right whale and/or Western Pacific gray whale is sighted at any distance from the vessel;

(2) Because of the sensitivity of beaked whales, approach to slopes and submarine canyons will be minimized, if possible, during the proposed survey.

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will take place to complement the visual monitoring program, if practicable. Visual monitoring typically is not effective during periods of poor visibility (e.g., bad weather) or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a ''hairy'' faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal condition and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths less than 20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations, and also during most periods when the *Langseth* is underway while the airguns are not operating. One Marine Mammal Observer (MMO) will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. MMOs monitoring the acoustical data will be on shift for 1–6 hours. Besides the ''visual'' MMOs, an additional MMO with primary responsibility for PAM will also be aboard. However, all MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will, if visual observations are in progress, contact the MMVO immediately to alert him/her to the presence of the cetacean(s) (if they have not already been seen), and to allow a power down or shutdown to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered include an acoustic encounter identification

number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

L-DEO will coordinate the planned marine mammal monitoring program associated with the TAIGER seismic survey in SE Asia with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. L-DEO and NSF will coordinate with Taiwan, China, Japan, and the Philippines, as well as applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

Proposed Reporting

MMVO Data and Documentation

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a shutdown of the seismic source when a marine mammal or sea turtles is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, cloud cover, and sun glare.

The data listed (time, location, etc.) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source shutdown, will be recorded in a standardized format. Data accuracy will be verified by the MMVOs at sea, and preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMVO observations will provide the following information:

(1) The basis for decisions about powering down or shutting down airgun arrays.

(2) Information needed to estimate the number of marine mammals potentially 'taken by harassment.' These data will be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. Report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Endangered Species Act (ESA)

Under section 7 of the ESA, NSF has begun consultation with the NMFS, Office of Protected Resources, Endangered Species Division on this proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of the IHA.

National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment (EA) of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in Southeast Asia, March-July 2009. NMFS will either adopt NSF's EA or conduct a separate NEPA analysis, as necessary, prior to making a determination of the issuance of the IHA.

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the seismic survey in SE Asia may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that cetaceans would have to be closer than 950 m (0.6 mi) in deep water, 1,425 m (0.9 mi) at intermediate depths, and 3,694 m (2.3 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (3) the fact that marine mammals would have to be closer than 6,000 m (3.7 mi) in deep water, 6,667 m (4.1 mi) at intermediate depths, and 8,000 m (4.9 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and (4) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a few percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue

an IHA to L-DEO for conducting a marine geophysical survey in Southeast Asia from March-July, 2009, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 15, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–30365 Filed 12–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL46

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

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

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application submitted by Wallace and Associates contains all the required information and warrants further consideration. The proposed EFP would extend the previously authorized EFP for an additional year to continue testing the safety and efficacy of harvesting surfclams and ocean quahogs from the Atlantic surfclam and ocean quahog Georges Bank (GB) Closure Area using a harvesting protocol developed by state and Federal regulatory agencies and endorsed by the U.S. Food and Drug Administration (FDA). The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Surfclam and Ocean Quahog regulations and Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before January 6, 2009.

ADDRESSES: Comments on this notice may be submitted by e-mail.

The mailbox address for providing e-mail comments is *DA8278@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on GB PSP Closed Area Exemption.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on GB PSP Closed Area Exemption.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

Copies of supporting documents referenced in this notice are available from Timothy Cardiasmenos, Fishery Policy Analyst, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at *http://www.nero.noaa.gov/sfd/clams*.

FOR FURTHER INFORMATION CONTACT: Timothy Cardiasmenos, Fishery Policy Analyst, phone 978–281–9204.

SUPPLEMENTARY INFORMATION: Truex Enterprises of New Bedford, MA, first submitted an application for an EFP on March 30, 2006, and public comment was solicited via the **Federal Register** on June 19, 2006 (71 FR 35254). On October 2, 2006, the applicant submitted additional information seeking to add states where the product harvested under the EFP could be landed. Comments for the revised EFP were published on November 14, 2006 (71 FR 66311). At that time, due to lack of concurrence on the Protocol for Onboard Screening and Dockside Testing for PSP Toxins in Molluscan Shellfish (Protocol) from the state of landing, the EFP was not issued. The applicant subsequently received concurrence from the state of landing and the state where the product is to be processed for the Protocol and EFP, and an EFP was authorized through the end of calendar year 2008.

The current applicant, Wallace & Associates, of Cambridge, MD, request an extension of the previously authorized EFP to allow the catch and retention for sale of Atlantic surfclams and ocean quahogs from within the Atlantic surfclam and ocean quahog GB Closure Area. This area, located east of 69°00′ W. long. and south of 42°20′ N. lat., has been closed since May 25, 1990. This closure was implemented based on advice from the FDA after samples of surfclams from the area tested positive for the toxins (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). These toxins are produced by the alga *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the saxotoxin, if eaten in large enough quantity, can cause illness or death from PSP. Due, in part, to the inability to test and monitor this area for the presence of PSP, this closure was made permanent through Amendment 12 to the FMP in 1999.

The primary goal of the proposed study is to test the efficacy of the Protocol that was developed by state and Federal regulatory agencies to test for presence of saxotoxins in shellfish, and which has been in a trial period through previous EFP's since 2006. This protocol would facilitate the harvest of shellfish from waters susceptible to HABs, which produce the saxotoxins, but that are not currently under rigorous water quality monitoring programs by either state or Federal management agencies. The Protocol details procedures and reporting for harvesting, testing, and landing of shellfish harvested from areas that are susceptible to HABs prior to the shellfish from entering commerce. A copy of the Protocol is available from the NMFS Northeast Region website: *http://www.nero.noaa.gov/sfd/clams*.

The proposed project would conduct a trial for the sampling protocol in an exemption zone within the larger 1990 GB Closure Area with the F/V Sea Watcher I (Federal permit #410565, O.N. 1160720). The exemption zone would not include any Northeast multispecies or essential fish habitat year-round closure areas. This proposed exempted fishing activity would occur during the 2009 calendar year, using surfclam and ocean quahog quota allocated to Truex Enterprises under the Federal individual transferable quota (ITQ) program. The applicant has estimated a harvest of 176,000 bushels (9,370,240 L) of surfclams and 80,000 bushels (4,259,200 L) of ocean quahogs from the exemption area. The exemption area has been tested in cooperation with the FDA

from 2006 to the present. No samples collected during that time were above acceptable levels for saxotoxins (80μg toxin/100g of shellfish).

The applicant has obtained endorsements for the EFP and the Protocol from the States of New Jersey and Delaware, the states in which it intends to land and process the product harvested under the EFP, respectively. Each state is responsible for regulating the molluscan shellfish industry within its jurisdiction and ensuring the safety of shellfish harvested within or entering its borders. This EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area specified at 50 CFR 648.73(a)(4). The Protocol and the pilot project that would be authorized by this EFP have also since been endorsed by the executive board of the Interstate Shellfish Sanitation Conference.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

In accordance with NAO Administrative Order 216–6, a Categorical Exclusion or other appropriate NEPA document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following the public comment period.

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

Dated: December 16, 2008.

Emily H. Menashes,

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

[FR Doc. E8–30336 Filed 12–19–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM10

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (Eglin AFB) for a period of 1 year.

DATES: Effective from December 11, 2008, through December 10, 2009.

ADDRESSES: The authorization, Eglin AFB's application containing a list of the references used in this document, and NMFS' Environmental Assessment (EA) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of Eglin's original 2003 application and its December, 2006 letter updating its request may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* A copy of the Final Programmatic EA (Final PEA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the affected species or stock(s), will not (where relevant) have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (P.L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of harassment as it applies to ''military readiness activities'' to read as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Summary of Request

Eglin AFB originally petitioned NMFS on February 13, 2003, for an authorization under section 101(a)(5)(D) of the MMPA for the taking, by Level B harassment, of several species of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin's application and proposed IHA and request for 30-day public comment was published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006).

On January 29, 2007, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on May 2, 2007. This application addendum requested revisions to three components of the IHA requirements: protected species surveys, ramp-up procedures, and sea state restrictions. A **Federal Register** notice of receipt of the application and proposed IHA published on May 30, 2007 (72 FR 29974). These proposed modifications

are addressed in detail later in this document (see ''Comments and Responses'' and ''Modifications to the Mitigation and Monitoring Requirements'').

A description of Eglin AFB's A-S gunnery activity follows.

Description of Activities

A-S gunnery missions, a ''military readiness activity,'' involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25–mm (0.98–in), 40–mm (1.57–in), and 105–mm (4.13–in) gunnery rounds containing, 0.0662 lb (30 g), 0.865 lb (392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to ''score'' the round (the impact of inert rounds on the sea surface would not be detected). The U.S. Air Force (USAF) has developed a 105–mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the ''Full-Up'' (FU) 105–mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during nighttime A-S gunnery exercises when visibility at the water surface is poor. However, the TR cannot be used in daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W–151B, W–151C, and W–151D as shown in Figure 1–2 in Eglin's 2003 application). Data indicate that W–151A (Figure 1–3 in Eglin's application) is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

As required under the 2006 IHA, the AC–130 gunship aircraft was to conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m). Based on an amendment requested by Eglin AFB and implemented here for safety reasons, NMFS recommends an operational altitude of approximately 4,500 to 10,000 ft (1,372–3,048 m). Ascent occurs over a 10–15 minute period. Eglin AFB has noted that the search area for these orbits ensures that no vessels (or protected species) are within an area of 5 nm (9.3 km) of the target. The AC–130 continues orbiting the selected target point as it climbs to the mission-testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew visually scan the sea surface within the aircraft's orbit circle for the presence of vessels and protected species. Primary responsibility for the surface scan is on the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors are also employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target area and repeat the clearance procedures. A typical distance from the coast for this activity is at least 15 mi (24 km).

When offshore, the crews can scan a 5–nm (9.3–km) radius around the potential impact area to ensure it is clear of surface craft, marine mammals, and sea turtles. Scanning is accomplished using radar, all-light television (TV), infrared sensors (IR), and visual means. An alternative area would be selected if any cetaceans or vessels were detected within a 5–nm (9.3 km) search area. Once the scan is completed, Mk–25 flares are dropped and the firing sequence is initiated.

A typical gunship mission lasts approximately 5 hr without refueling and 6 hr when air-to-air refueling is accomplished. A typical mission includes: (1) 30 min for take off and to perform airborne sensor alignment, align electro-optical sensors (IR and TV) to heads-up display; (2) 1.5 to 2 hr of dry fire (no ordnance expended) and includes transition time; (3) 1.5 to 2 hr of live fire, and includes clearing the area and transiting to and from the range (actual firing activities typically do not exceed 30 min); (4) 1 hr air-to-air refueling, if and when performed; and (5) 30 min of transition work (take-offs, approaches, and landings-pattern work).

The guns are fired during the live-fire phase of the mission. The actual firing can last from 30 min to 1.5 hr but is typically completed in 30 min. The number and type of A-S gunnery munitions deployed during a mission varies with each type of mission flown. In addition to the 25-, 40-, and 105–mm rounds, marking flares are also deployed as targets. All guns are fired at a specific target in the water, usually an Mk–25 flare, starting with the lowest caliber ordnance or action with the least impact and proceeding to greater caliber sizes. To establish the test target area, two Mk–25 flares are deployed into the center of the 5–nm (9.3–km) radius cleared area (visually clear of aircraft, ships, and surface marine species) on the water's surface. The flare's burn time normally lasts 10 to 20 min but could be much less if actually hit with one of the ordnance projectiles; however, some flares have burned as long as 40 min. Live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 min. Firing pauses would only exceed 10 min if surface boat traffic or marine protected species caused the mission to relocate; if aircraft, gun, or targeting system problems existed; or if more flares needed to be deployed. The Eglin Safety Office has described the gunnery missions as having 95–percent containment with a 99–percent confidence level within a 5–m (16.4–ft) area around the established flare target test area.

Live-fire Event: 25–mm Round

The 25–mm (0.98–in) firing event in a typical mission includes approximately 500 to 1000 rounds. These rounds are fired in short bursts. These bursts last approximately 2–3 s with approximately 100 rounds per burst. Based on the very tight target area and extremely small miss distance, these bursts of rounds all enter the water within a 5–m (16.4–ft) area. Therefore, when calculations of the marine mammal Zone of Impact (ZOI) and take estimates are made later in this document for the 25–mm rounds, calculations will be based on the total number of rounds fired per year divided by 100.

Live-fire Event: 40–mm Round

The 40–mm (1.57 in) firing event of a typical mission includes approximately 10 s with approximately 20 rounds per burst. Based on the very tight target area and extremely small ''miss'' distance, these bursts of rounds all enter the water within a 5–m (16.4 ft) area. Therefore, when calculations of the marine mammal ZOI and take estimates are made later in this document for the 40–mm rounds, calculations will be based on the total number of rounds fired per year divided by 20.

Live-fire Event: 105–mm Round

The 105–mm firing event of a typical mission includes approximately 20 rounds. These rounds are not fired in bursts, but as single shots. The 105–mm firing event lasts approximately 5 min with approximately two rounds per minute. Due to the single firing event of the 105–mm round, the peak pressure of each single 105–mm round is measured at a given distance (90 m (295 ft)) for the 105mm TR and 216 m (709 ft) for the 105mm FU).

As described in Eglin's 2003 application, gunnery testing in this request includes historical baseline yearly amounts in addition to proposed nighttime gunnery missions. Daytime gunnery testing uses the 105–mm FU round and nighttime gunnery training is proposed using the 105–mm TR. The number of 105–mm rounds including nighttime operations would amount to 1,742. As shown in detail in Tables 1 and 2, Eglin proposes to conduct a total of 28 daytime missions and 263 nighttime missions annually, expending 3,832 rounds in daytime and 30,802 rounds nighttime (242 105–mm FU and 1,500 rounds would be the 105–mm TR).

Comments and Responses

A notice of receipt of Eglin AFB's application for an incidental take authorized under section 101(a)5)(D) of the MMPA and request for 30-day public comment on the application and the proposed IHA was published on May 30, 2007 (72 FR 29974). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission) and a member of the public.

Comment 1: A member of the public noted that it is not ''incidental at all to kill whales, dolphins, and other marine life by firing flares and bombs at them.''

Response: Eglin AFB proposes to conduct air-to-surface gunnery exercises, a military readiness activity. Eglin does not fire flares, gunnery rounds, or bombs at marine mammals, but instead prevents injury or mortality to marine mammals by implementing mitigation measures. In order to reduce the probability of injuring or harassing a marine mammal that may be in the area where gunnery exercises occur, Eglin AFB will implement a suite of mitigation and monitoring measures as described in this document. For example, Eglin AFB will cease A-S gunnery exercises if marine mammals are detected within a 5–nm (9.8 km) radius of the target area. These measures are described later in this document.

TABLE 1. SUMMARY OF DAYTIME GUNNERY TESTING OPERATIONS IN THE EGTTR

Test Area	Category	Expendable	Condition	Baseline Quantity of Expendables	Number of Missions	Number of Events
W-151A	GUN	105 mm HE	LIVE	128	6	18
		25 mm HEI	LIVE	1,275	1	1
		40 mm HEI	LIVE	536	6	18
W-151B	GUN	105 mm HE	LIVE	46	2	6
		25 mm HEI	LIVE	294	1	1
		40 mm HEI	LIVE	146	1	3
W-151C	GUN	105 mm HE	LIVE	10	1	3
		25 mm HEI	LIVE	142	1	1
		40 mm HEI	LIVE	50	1	3
W-151D	GUN	105 mm HE	LIVE	39	2	6
		25 mm HEI	LIVE	567	1	1
		40 mm HEI	LIVE	198	2	6
W-151S	GUN	105 mm HE	LIVE	19	1	3
		25 mm HEI	LIVE	283	1	1
		40 mm HEI	LIVE	99	1	3
Total				3,832	28	74

TABLE 2. SUMMARY OF NIGHTTIME GUNNERY TRAINING OPERATIONS IN THE EGTTR

Test Area	Category	Expendable	Condition	Alt. 3 Quantity	Number of Missions	Number of Events
W-151A	GUN	105 mm TR	LIVE	902	45	135
		25 mm HEI	LIVE	7,864	8	8
		40 mm HEI	LIVE	9,811	102	306
W-151B	GUN	105 mm TR	LIVE	255	13	39
		25 mm HEI	LIVE	1,452	2	2
		40 mm HEI	LIVE	3,023	31	93
W-151C	GUN	105 mm TR	LIVE	197	9	36

TABLE 2. SUMMARY OF NIGHTTIME GUNNERY TRAINING OPERATIONS IN THE EGTTR—Continued

Test Area	Category	Expendable	Condition	Alt. 3 Quantity	Number of Missions	Number of Events
		25 mm HEI	LIVE	2,301	2	2
		40 mm HEI	LIVE	2,302	24	72
W-151D	GUN	105 mm TR	LIVE	133	7	21
		25 mm HEI	LIVE	830	1	1
		40 mm HEI	LIVE	1,583	16	48
W-151S	GUN	105 mm TR	LIVE	13	1	3
		25 mm HEI	LIVE	54	1	1
		40 mm HEI	LIVE	82	1	3
Total				30,802	263	770

The MMPA authorizes the taking of marine mammals provided the taking is incidental to conducting the otherwise lawful activity. In this case, the USAF has obtained a permit (called an IHA under section 101(a)(5)(D) of the MMPA or a Letter of Authorization (LOA) under section 101(a)(5)(A) of the MMPA) to take marine mammals incidental to military readiness activities. This process was explained earlier in this document.

Comment 2: The member of the public continues that the awful aim of these alleged military people is shown by the recent firing of a flare at Warren Grove firing range recently that burned 17,000 acres of the New Jersey Pinelands. That shows the inaccuracy of their aim. The commenter states that ''Regarding the statements about the care they will take, they told us that before they bombed the school near Warren Grove gunnery range too. They set fires there with another mistake about 5 years ago that burned 14,000 acres. These alleged mistakes on killing and environmental destruction happen far too often with our military.''

Response: The commenter is referring to incidents that occurred at the New Jersey Air National Guard base at Warren Grove, NJ. Information on these incidents is available through Wikipedia, GlobalSecurity and other Internet sites. Accidents at this military base are not related to Eglin AFB's offshore activity in the GOM. As mentioned previously, the Eglin AFB Safety Office has described the gunnery missions as having 95–percent containment with a 99–percent confidence level within a 5–m (16.4–ft) area around the established flare target test area. As a result, NMFS believes that no marine mammals will be killed or seriously injured as a result of Eglin AFB's A-S gunnery exercises.

Comment 3: The Commission recommends that NMFS issue the requested authorization, provided that the applicant be required to conduct all practicable monitoring and mitigation measures that reasonably can be expected to protect the potentially affected marine mammal species from serious injury.

Response: NMFS has determined that the mitigation measures proposed by Eglin AFB and required by NMFS under a new IHA for the A-S Gunnery exercises will protect marine mammals from any injury or mortality and will reduce Level B harassment impacts to the lowest level practicable.

Comment 4: The Commission recommends that NMFS should require that the applicant's annual report of activities include a detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals and sea turtles in the area of operations.

Response: NMFS agrees and has requested this information as part of its annual monitoring report.

Comment 5: The Commission recommends that NMFS should require the applicant to provide additional information to support its request for the revision of sea state restrictions.

Response: NMFS does not agree that additional information is needed at this time. NMFS points out that a mitigation requirement for not conducting an activity in a sea state greater than 3 (in some cases, 3.5) is standard for vessel and aircraft using marine mammal observers. However, in the IHA application, Eglin AFB makes clear that it would be difficult for Eglin AFB to conduct operations with a limitation of a sea state of 3 or less. As Eglin AFB explains in their current IHA application, sea state 4 encompasses wind speed up to a maximum of 16 knots (18 mph). Under these conditions, whitecaps are fairly frequent on the sea surface, but sea spray does not occur. Sea spray, whitecaps, and large waves can decrease the effectiveness of IR detection. However, marine species can usually be observed in weather conditions that allow observation of the target flare. One must remember that visual observations are enhanced, especially at night, by use of the AN/AAQ–26 infrared detection equipment in concert with the All-Light TV, which are the primary sensors utilized to clear an over-water range. Therefore, because Eglin AFB relies principally on electronic detection instrumentation and less on visual observations, an increase in sea state from 3 to 4 is unlikely to compromise mitigation effectiveness or result in the probability of increased harassment, injury or mortality to marine mammals.

Comment 6: The Commission reiterates its view that an across-the-board definition of temporary threshold shift (TTS) as constituting no more than Level B harassment inappropriately dismisses possible injury and biologically significant behavioral changes that may occur if an animal's hearing is compromised, even temporarily.

Response: This issue has been addressed several times by NMFS in the past (see for example 70 FR 48675, August 19, 2005; and 66 FR 22450, May 4, 2001). As stated in those documents, the best scientific information available concludes that TTS is not an auditory injury, but is a temporary physiological reaction on the part of mammals to avoid an injury. The Commission, however, argues for considering TTS as both Level A harassment and Level B

harassment based on conjecture on what might occur if a marine mammal with compromised hearing was at a disadvantage for survival. As noted previously, it is likely that marine mammals evolved certain behavioral responses to address natural loud noises in the environment (for example, billions of lightning strikes per year on the ocean at about 260 dB peak) by changes in conspecific spatial separation. For a more detailed analysis of why TTS is not considered Level A harassment, please refer to the **Federal Register** citations provided here. You may also refer to Southall *et al.* (2007) for information on this subject.

Comment 7: With regard to estimates of potential take, the Commission states that NMFS appears to assume that nine of ten animals that are exposed to sounds loud enough to temporarily deafen them would not be otherwise disturbed. The Commission believes that the literature on marine mammals contains considerable evidence that marine mammals will exhibit significant changes in their behavioral patterns in response to sounds much less intense than those required to cause TTS.

Response: First, NMFS cautions against using incorrect terminology. Marine mammals subject to TTS are not ''deafened,'' even temporarily. Instead, marine mammals with TTS have a decrease in hearing sensitivity that may last from a few seconds to several hours, depending upon several factors. That does not mean that they cannot hear, only that they may not perceive those quieter sounds that are below this temporary hearing threshold. Humans may incur with same temporary phenomenon when using iPods and attending loud sporting events or concerts.

Second, for Eglin AFB's air-to-surface gunnery activity, Eglin and NMFS have calculated estimates for behavioral responses by marine mammals at levels lower than TTS. In the case of the A-S gunnery exercises, this is due to multiple detonations and potential marine mammal exposures by the gunnery activity. These calculations are provided later in this document. However, in other applications, when there are only single detonations (such as in Eglin AFB's Precision Strike Weapon and the U.S. Navy shock trials), it is unlikely that marine mammals would have a significant behavioral response (but may have a response due to TTS, which has been accounted for) to the single detonation. For more information on this subject, NMFS recommends interested readers review Appendices C and D of the Navy's 2008 Final Environmental Impact Statement (EIS) for the MESA VERDE shock trial. The Navy's Final EIS is available for viewing or downloading at: *http://www.mesaverdeeis.com*.

Comment 8: The Commission recommends that NMFS either provide a rational explanation for what appears to be an assumption that marine mammals would have to experience sound levels well above that required to cause TTS before they would experience a behavioral disturbance or revise its estimates of the number of animals to be taken by behavioral disturbance to a more realistic number.

Response: NMFS believes that the Commission is referring to Table 1 in the earlier **Federal Register** notice (and Table 11 in this **Federal Register** notice) wherein Eglin AFB and NMFS have provided estimates for Level A harassment (injury), Level B harassment (TTS) and Level B harassment (behavioral harassment). For Level B harassment, we have provided those estimates using the dual criteria (energy and pressure) for TTS, but only for pressure for behavioral harassment. As explained previously, NMFS adopted a dual criterion for TTS Level B harassment, but has not adopted a dual criterion for non-TTS behavioral responses by marine mammals. A TTS pressure criterion was added during earlier shock trial rulemakings (see 87 FR 22450, May 4, 2001) to provide a more conservative zone for calculating potential TTS exposures when the explosive or the animal approaches the sea surface (for which cases the explosive energy is reduced but the peak pressure is not). Originally established at 12 psi for large charges (such as in the 10,000 lb (4536 kg) shock trials), empirical research now supports a pressure metric of 23 psi, as explained previously (see 70 FR 48675, August 19, 2005). The 23–psi metric for onset TTS was adopted previously by NMFS for this action and by the U.S. Navy for large detonations (see reference provided in previous response.) Explanation is provided elsewhere in this document (and in the proposed IHA notice) on NMFS' incorporation of 176 dB (SEL) for calculating behavioral responses below TTS. Therefore, while NMFS believes that one would generally expect the pressure (dB) threshold for behavioral modification to be lower than that causing TTS, due to a lack of empirical information and data, a dual criteria for Level B behavioral harassment cannot be developed. Later in this document, NMFS has estimated potential Level B (behavioral) harassment below TTS due to the multiple detonations occurring as part of this activity. In addition, NMFS plans to investigate this situation during the development of a proposed rule on this action and will provide the Commission and the public additional information at that time.

Comment 9: The Commission recommends that NMFS review and provide more reasonable justification for its models and assumptions that lead to the conclusion that no animals will be killed during the course of a full year of such exercises. The Commission also questions NMFS' method for estimating the number of animals that may be killed by these exercises.

Response: This information was provided in the 2006 notice of issuance of an IHA to Eglin AFB for A-S gunnery exercises (71 FR 27695, May 12, 2006). NMFS recommends that reviewers of this year's application refer to that document for additional information. However, as a result of the Commission's recommendation and to ensure clarity of its MMPA determinations, NMFS has reprinted those findings in this document.

Comment 10: The Commission notes that in its response to its comments on the previous year's request for an IHA (71 FR 27701, May 12, 2006), NMFS suggested that to experience a significant behavioral disturbance, animals would have to be within 22.1 m (72.5 ft) of the zone of impact from an aircraft flying at 6,000 ft (1829 m). In this year's analysis, NMFS indicates that up to 25 animals may be at least that close, but that none would be killed. It seems hard to imagine that, either through inaccuracy in firing or confusion on the part of animals within 22 m (72 ft) (e.g., darting into the zone of impact), no animals would be killed over the course of a year of such exercises. For that reason, the Commission recommends that NMFS review and provide a more reasonable justification for its models and assumptions that lead to the conclusion that no animals will be killed during the course of a full year of such exercises.

Response: NMFS has republished in this document several tables on the calculations for direct physical impact (DPI) that were published in the cited 2006 **Federal Register** notice. These tables all indicate that the potential for mortality is close to non-existent. In the proposed IHA notice, NMFS published the calculations for estimating the potential for marine mammals to be harassed, injured or killed as a result of A-S gunnery exercises. NMFS has not received any comments from the public or the Commission criticizing the methodology of these calculations (they are not based on models, but on calculations based on species/stock

density, area of impact and number of events as described previously and later in this document). The hypothesis proposed by the Commission that animals may dart into the small DPI zone(s) fails to account for the effectiveness of the mitigation measures required under the IHA. These measures are analyzed later in this document. Since the usual area of these live-fire events are in coastal waters, the marine mammals will likely be detectable electronically to the aircraft personnel when at firing altitude. As a final note, if marine mammals have been seriously injured or killed by A-S gunnery exercises in the past, necropsies of GOM marine mammals stranded on a beach should have indicated single or multiple wounds caused by gunnery projectiles. NMFS is unaware of any marine mammals containing the projectiles with a caliber consistent with that used by Eglin.

Comment 11: The Commission notes that NMFS is proposing to require that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the gunnery activities. Any such suspension should remain in place until NMFS has (1) reviewed the situation and determined that further mortalities or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS agrees. In the case of Eglin AFB's A-S Gunnery exercises, if marine mammals are found with injuries from gunnery rounds matching those used by the AC–130 gunships, NMFS will suspend Eglin's IHA until such time as (1) another cause for the wound(s) is/are found to have caused the animal(s) demise; (2) Eglin AFB reevaluates the A-S gunnery program and adds additional mitigation to ensure that marine mammals are not seriously injured or killed by future A-S Gunnery exercises, or (3) Eglin AFB receives an authorization under section 101(a)(5)(A) of the MMPA. In that latter regard, irregardless of whether mortality is a possibility, NMFS plans to issue proposed regulations for Eglin's A-S Gunnery exercises to be effective upon expiration of this IHA.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Of these 29 species of marine mammals, approximately 21 may be found within the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, Clymene dolphin, spinner dolphin, striped dolphin, killer whale, false killer whale, pygmy killer whales, Risso's dolphin, Fraser's dolphin, melon-headed whale, rough-toothed dolphin, and pilot whale. General information on these species can be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.*, 2007). This latter document is available at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm205/*. General information on Florida manatees, which is not a species under NMFS jurisdiction, can be found in the Florida Manatee Recovery Plan (USFWS, 2001).

Potential Impacts to Marine Mammals

A-S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (Eglin, 2002 (Final PEA)). However, based on analyses provided in the Eglin Final PEA, Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, NMFS concurs with Eglin that gunnery exercises are not likely to result in any injury or mortality to marine mammals.Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information.

Estimation of Take and Impact

Direct Physical Impacts (DPI)

Potential impacts resulting from A-S test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. Marine mammals swimming at the surface could potentially be injured or killed by projectiles and falling debris if not sighted and firing discontinued. Mainly due to the comparatively large number of rounds expended, small arms gunnery operations offers a worst-case scenario for evaluating DPI of EGTTR operations. Some small-arms gunnery rounds contain small amounts of explosives, but the majority do not. However, the possibility of DPI to marine mammals is considered highly unlikely. Therefore, the risk of injury or mortality is low. The assumptions made by Eglin AFB for DPI calculations can be found in Eglin's 2002 Final PEA under the analysis for Alternative 1. Approximately 606 small-arms gunnery firing events comprise the baseline level of potential DPI events, as shown here in Table 3.

DPI impacts are only anticipated to affect marine species at or very near the ocean surface. As a result, in order to calculate impacts, Eglin used corrected species densities (see Table 4–23 in Eglin's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. As shown in Table 4 (and thereby correcting PEA Table 4–23), the impacts to marine mammals swimming at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be an average of 0.2059 marine mammals per year. However, NMFS believes that the mitigation measures that Eglin proposes under this action would significantly reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (bombs, missiles, and drones) to impact marine mammals. The number of annual events expected are 551 bombs, 1,183 missiles, and 99 drones (see Table 5). As shown in Eglin's 2002 Final PEA and Table 6 in this document, the potential for any DPI to marine mammals is extremely remote (1 cetacean per 48 yr of activity) and can, therefore, be discounted.

Similar to non-small arms/non-gunnery DPI impacts, DPI impacts from gunnery activities may also affect marine mammals in the surface zone. Again, DPI impacts are anticipated to affect only marine mammals at or near the ocean surface, and not animals that are submerged at the time. Accordingly, the density estimates have been adjusted to indicate surface animals only being potentially affected. Using the firing methodology explained earlier in this document, Tables 7 and 8 demonstrate that the potential for any DPI from gunnery activities are extremely remote and can be discounted. Using the largest round (105 mm), it would take approximately 120 yr to impact a marine mammal from daytime gunnery activities and approximately 27 yr to impact a marine mammal from nighttime gunnery activities.

TABLE 3. EGTTR AIR-TO-SURFACE GUNNERY/SMALL ARMS OPERATIONS AS EVENTS

Activity/EGTTR Event	Percentage	Number
Small Arms-50 Cal Ball Events	16.3 percent	99
Small Arms 5.56 Linked Events	0.8 percent	5
Small Arms 7.62 mm Ball Events	82.8 percent	502
Total Baseline -Small Caliber Events	100 percent	606

TABLE 4. POTENTIAL SMALL ARMS DPI IMPACTS (ANNUAL) TO MARINE MAMMAL SPECIES

Species	Density (#/km^2)	Adjusted Density (#/km^2)	Impact Zone Area[1] (km^2)	Animals in Impact Zone (#)	Years To Impact 1 Mammal(#)
Cetaceans	4.381	0.4381	0.047874	2.10E-02	48
T&E Cetaceans	0.011	0.0011	0.047874	5.27E-05	18,989

TABLE 5. NON-SMALL ARMS OPERATIONS AS EVENTS

Activity/EGTTR Event	Percentage	Number
Bombs	30.1 percent	551
Missiles	64.5 percent	1183
Drones	5.4 percent	99
Total Baseline Non-Small Arms Events	100 percent	1833

TABLE 6. POTENTIAL NON-SMALL ARMS/NON-GUNNERY DPI IMPACTS (ANNUAL) TO MARINE MAMMAL SPECIES

Species	Density (#/km^2)	Adjusted Density (#/km^2)	Impact Zone Area[1] (km^2)	Animals in Impact Zone (#)	Years To Impact 1 Mammal(#)
Cetaceans	4.381	0.4381	0.00688	0.003014128	332
T&E Cetaceans	0.011	0.0011	0.0688	0.000007568	132,135

TABLE 7. POTENTIAL DAYTIME GUNNERY DPI IMPACTS (ANNUAL) TO MARINE CETACEANS.

Species/shell size	Density (#/km^2)	Adjusted Density (#/km^2)	Impact Zone Area (km^2)	Number of Events (#)	Animals in Impact Zone (#)	Years To Impact 1 Animal (#)
Cetacea (25mm)	4.381	0.4381	.00007854	26	.000881198	1,135
Cetacea (40mm)	4.381	0.4381	.00007854	51	.001770311	565
Cetacea (105mm)	4.381	0.4381	.00007854	242	.008326827	120

TABLE 8. POTENTIAL NIGHTTIME GUNNERY DPI IMPACTS (ANNUAL) TO MARINE CETACEANS.

Species/shell size	Density (#/km^2)	Adjusted Density (#/km^2)	Impact Zone Area (km^2)	Number of Events (#)	Animals in Impact Zone (#)	Years To Impact 1 Animal (#)
Cetacea (25mm)	4.381	0.4381	.00007854	125	.004287972	233
Cetacea (40mm)	4.381	0.4381	.00007854	723	.024873814	40
Cetacea (105mm)	4.381	0.4381	.00007854	1061	.036507285	27

Marine Mammal Take Estimates from Gunnery Activities

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the previous IHA on this action (71 FR 27695, May 12, 2006) and in this **Federal Register** notice. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the *USS SEAWOLF* and the *USS Winston S. Churchill* (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts from Eglin AFB's A-S gunnery exercises include: (1) mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Similar to the effects from DPI, due to the small amounts of net explosive weight (NEW) for each of the rounds fired in the EGTTR and the mitigation measures required to be implemented by NMFS, mortality resulting from either DPI or the resulting sounds generated into the water column from detonations was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS.

Permanent hearing loss is considered an injury and is termed permanent threshold shift (PTS). NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed TTS, meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as Level B harassment. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in previous shock trials to represent TTS was 12 pounds per square inch (psi) which, for the NEW used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa2–s, total EFDL/SEL metric. The 12–psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, Churchill FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for small charges, the 12–psi metric is not an adequate predictor of the onset of TTS.

Finneran et al. (2002) measured TTS in a bottlenose dolphin and a beluga whale exposed to single underwater impulses produced by a seismic water gun in San Diego Bay. The water gun was chosen over other seismic sources, such as air guns, because the impulses contain more energy at high frequencies where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4, and 30 kilohertz (kHz). A relatively small and short-term level of masked TTS (MTTS)(7 dB at 0.4 kHz and 6 dB at 30 kHz) occurred in the beluga whale at a peak pressure of 160 kilopascals (kPa), which is equivalent to 23 psi, 226 dB re 1 micro Pa peak-peak pressure, and 186 dB re 1 microPa2–s. The maximum experimental peak pressure exposure of 207 kPa (30 psi, 228 dB re 1 microPa peak-peak pressure, 188 dB re 1 microPa2–s) did not cause any measurable masked TTS in the bottlenose dolphin. The results of these field experiments represent the most current science available for the relationship between peak pressure and TTS in marine mammals. It is also considered precautionary for this project since the bottlenose dolphin did not incur an MTTS at the higher level of 30 psi. Therefore, until additional information becomes available, 23 psi is considered an appropriate and conservative metric for predicting the onset of pressure-related TTS from small explosive charges.

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran et al., 2002; Schlundt et al., 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral effects are typically defined as alterations of trained behaviors. Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in subsequent sections of this document refer to such behavioral effects as ''sub-TTS Level B harassment.'' Schlundt et al. (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 micro Pa for the bottlenose dolphins and from 180 to 196 dB re 1 micro Pa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 176 dB in the greatest 1/3 octave band EFDL/SEL.

Table 9 summarizes the relevant thresholds for levels of noise that may result in Level A (injury) harassment, Level B (TTS) behavioral harassment or Level B (sub-TTS) behavioral harassment to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf). Table 10 provides the estimated ZOI radii for the EGTTR ordnance. At this time, there is no empirical data or information that would allow NMFS to establish a peak pressure criterion for sub-TTS behavioral disruption (see response to comment 8).

As mentioned previously, the EGTTR live fire events are continuous events with pauses during the firing usually well under a minute and rarely from 2 to 5 min. Live fire typically occurs within a 30 min time frame, including all ordnance fired: 25 mm (Phase I), 40 mm (Phase II), and 10 mm (Phase III), and where the 105–mm ordnance are fired as separate rounds with up to 30–s intervals, the 25–mm and the 40–mm are often fired in multiple bursts. These bursts include multiple rounds (25 to 100) within a 10- to 20–s time frame. Eglin notes that even if animal avoidance once firing commences is not considered, the average swim speed (1.5 m/s) of an animal would not allow sufficient time for new animals to re-enter the Level B harassment ZOI (23 psi) within the time frame of a single burst. As such, only the peak pressure of a single round is measured per burst and experienced at a given distance (49

m (161 ft; Phase I), 122 m (400 ft; Phase II)).

TABLE 9. EGTTR CRITERIA AND THRESHOLDS FOR IMPACT OF EXPLOSIVE NOISE ON MARINE MAMMALS

Criterion	Criterion Definition	Threshold
Level A Harassment-Auditory Injury	50% of Animals Exposed Would Experience Ear-Drum Rupture, Resulting in Approximately 30% PTS	205 dB Total EFDL
Level B Harassment	Temporary Threshold Shift (NMFS Dual Criterion)	23 PSI Peak Pressure
Level B Harassment	Temporary Threshold Shift (NMFS Dual Criterion)	182 dB 1/3 Octave Band EFDL
Level B Harassment	Sub-TTS Behavioral Disruption	176 dB 1/3 Octave Band EFDL

TABLE 10. ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE EGTTR ORDNANCE.

Expendable	Level A Harassment-Injurious(205 dB) EFD (m)	Level B Harassment Non-Injurious (182 dB) EFD For TTS (m)	Level B Harassment Non-injurious (23 psi) For TTS (m)	Level B Harassment-Non-injurious (176 dB) EFD For Behavior (m)
105 mm FU	0.79	11.1	216	22.1
105-mm TR	0.22	3.0	90	6.0
40-mm HE	0.33	4.7	122	9.4
25-mm HE	0.11	1.3	49	2.6

FU=Full-up; TR=Training Round; HE=High Explosive

For daytime firing it is assumed that the average swim speed per cetacean is approximately 3 knots or 1.5 m/sec. As a conservative scenario, Eglin assumes that there is one animal present within or near the 216–m ZOI (FU 105–mm round ZOI) which may be potentially ensonified within the 23–psi TTS exposure at the time that the 105–mm live firing begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km2 or approximately 500 m (1640 ft) apart (all species) for the take estimate analysis. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 216–m (709 ft) ZOI (23–psi TTS ZOI) in approximately 5.5 min, assuming a straight line path. With live-fire events for the 105–mm occurring at a rate of approximately 2 rounds/min, nearly one half (or 10 rounds) of the total 105–mm rounds (20 rounds) would potentially be expended within this 5.5 min time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed of 1.5 m/s (4.9 ft/s) would allow sufficient time for new animals to re-enter the 23–psi TTS impact area. Allowing for a potential 2 min break in firing after 10 rounds are expended, it is, therefore, conservative and reasonable to assume that nearly 3 to 4 individual animals could be exposed to the 23–psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and Level B harassment take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that although single animals may be ensonified more than once due to the time required to exit the 23 psi TTS ZOI, animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Similarly, as a conservative approach for nighttime firing, Eglin assumes that there is one animal present within or near the 90–m (295–ft) ZOI (105–mm TR ZOI) which may be potentially ensonified within the 23–psi TTS exposure zone at the time that the 105–mm round live firing phase begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km2 (all species) for the approach of impact analyses for estimation of take. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 90–m (295–ft) ZOI (23–psi TTS ZOI) in approximately 5.5 min or the same time as with the 216–m ZOI (used for the 105–mm FU). The difference is the amount of time it takes the animal to exit the ZOI or in other words, how long the animal resides within the ZOI on a straight line path. With live fire events of the 105–mm round occurring at a rate of approximately 2 rounds per min, nearly one half (or 10 rounds) of the total 105–mm rounds (20 rounds) would potentially be expended within this 5.5-min time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23–psi TTS impact area. Allowing for a potential 2-min break in firing after 10 rounds are expended, it is conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23–psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that, although single animals may be ensonified more than once due to the time required to exit the 23–psi TTS ZOI, individual animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Based on this discussion, Table 11 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without

consideration of the effectiveness of Eglin AFB's proposed mitigation measures (except use of the TR), which are discussed in the next section.

Mitigation Measures

Under the previous IHA, Eglin AFB employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. These mitigation measures are discussed first. The modifications to the mitigation measures requested by Eglin AFB as part of its IHA request for renewal for this IHA will follow in this document.

Development of the Training Round

The largest type of ammunition used during typical gunnery missions is the 105–mm (4.13–in) round containing 4.7 lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the USAF developed a 105–mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to dramatically reduce the risk of harassment at night and Eglin AFB anticipates a 96 percent reduction in impact by using the 105–mm TR.

Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will halt immediately and relocate as necessary or suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with IR and TV monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

TABLE 11. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY GUNNERY MISSION NOISE

Species	Adjusted Density (#/km^2)	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-Injurious 182 dB* EFD For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Bryde's whale	0.007	<0.001	0.010	0.041
Sperm whale	0.011	<0.001	0.016	0.064
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	0.139
Cuvier's beaked whale	0.10	<0.001	0.015	0.058
Mesoplodon spp.	0.019	<0.001	0.028	0.110
Pygmy killer whale	0.030	<0.001	0.044	0.174
False killer whale	0.026	<0.001	0.038	0.151
Short-finned pilot whale	0.027	<0.001	0.039	0.157
Rough-toothed dolphin	0.028	<0.001	0.041	0.163
Bottlenose dolphin	0.810	0.006	1.177	4.706
Risso's dolphin	0.113	0.001	0.164	0.657
Atlantic spotted dolphin	0.677	0.005	0.984	3.934
Pantropical spotted dolphin	1.077	0.008	1.565	6.258
Striped dolphin	0.237	0.002	0.344	1.377
Spinner dolphin	0.915	0.007	1.330	5.316
Clymene dolphin	0.253	0.002	0.368	1.470
Unidentified dolphin**	0.053	<0.001	0.077	0.308
Unidentified whale	0.008	<0.001	0.012	0.046
All marine mammals	4.325	0.032	6.29	25.13

* dB = dB re 1 μPa.s
** Bottlenose dolphin/Atlantic spotted dolphin

Ramp-Up

In 2006, Eglin incorporated a ramp-up procedure by beginning with the smallest round (or the round having least impact) and proceeding to subsequently larger size rounds (in this case the lowest caliber of munition up to the 105–mm FU round). Theoretically, this allows animals to perceive steadily increasing sounds and to react, if necessary. Alerting animals in advance of injurious sound waves by transmitting low-power ''warning'' signals a short time before the action provides a safeguard where there is a potential for the risk of injury.

Other Mitigation

Under the 2006 IHA, NMFS required additional mitigation measures to protect marine life. These requirements were:

(1) Test firing will be conducted only when sea surface conditions are sea state 3.5 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5–nm (9.3–km) wide prospective target area to attempt to sight any protected species that may be present (e.g., marine mammals, sea turtles, and Sargassum rafts). The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a recommended altitude of 1,000 ft (305 m). Provided protected species are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of listed and non-listed marine mammals. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the A-S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 min prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles, and other onboard sensors to search for marine mammals while performing area clearance procedures during night-time pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 min or the mission location relocated and resurveyed.

Monitoring and Reporting

The Incidental Take Statement in NMFS' Biological Opinion on this action required certain monitoring measures to protect marine life. NMFS also imposed these same requirements, as well as additional ones, under Eglin AFB's 2006 IHA as they related to marine mammals. They included:

(1) Development and implementation of a marine species observer-training program in coordination with NMFS. This program will provide expertise to Eglin's testing and training community in the identification of protected marine species during surface and aerial mission activities in the GOM. Additionally, the A-S gunnery mission aircrews will participate in the species observation training. As a result, designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4,572 to 6,096 m) elevation, and initiating a spiraling descent down to an observation altitude of approximately 1,500 ft (457 m) elevation. Rates of descent will occur over a 3 to 5 min time frame.

(3) Eglin will track their use of the EGTTR for test firing missions and protected species observations, through the use of mission reporting forms.

(4) A-S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A-S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to the NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (i.e., injury or mortality) must be immediately reported to the NMFS represent-ative and to the respective stranding network representative.

Modifications to the 2006 Mitigation and Monitoring Requirements

As of October 27, 2006, two A-S gunnery missions have been attempted (one of the missions was ultimately aborted due to sea state). As a result of flying live missions over the ocean, aircrews have requested a modification to three components of the 2006 IHA requirements. These components are: (1) protected species surveys, (2) ramp-up procedures, and (3) sea state restrictions.

Protected Species Surveys-Altitude and Equipment

Currently, pre-mission surveys for marine mammals and other protected species must be commenced at a maximum altitude of 1,500 ft (457 m)(with 1,000 ft (305 m) recommended) during the day and at 2,000 ft (610 m)(1,500 ft (457 m) recommended) at night. Visual scans, as well as all applicable instruments, are to be used to survey for protected species at the water surface. Aircrews have reported that these altitudes are not safe, and that the onboard instrumentation used for surveys actually performs better at a higher altitude.

The propeller-driven AC–130 aircraft, which is used for all A-S gunnery missions, is among the largest and heaviest in the USAF, weighing up to approximately 150,000 lbs (68,040 kg) depending on equipment configuration. If an emergency situation, such as a malfunction of one or more engines, occurred during the protected species surveys, the aircraft would likely lose altitude initially. The AC–130 does not perform well with less than a full compliment of engines. At 1,000 to 2,000 ft (305 to 610 m), the pilots would have little time to recover before striking the water surface, which would result in potential human fatalities and certain loss of the aircraft. The AC–130 is typically flown at a minimum altitude of 4,500 ft (1372 m). Eglin AFB and NMFS note that the 2004 NDAA amendments to the MMPA explicitly require consideration of personnel safety during military readiness activities.

AC–130 gunships are equipped with low-light TV cameras and ANIAAQ–26 Infrared Detection Sets (IDS). The TV cameras operate in a range of electromagnetic radiation of 532 to 980 nanometers (visible and near-visible light), and the IDS system operates in the IR portion of 7.5 to 11.7

micrometers. IR systems are capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies, or from reflected and scattered thermal energy. In contrast to typical night-vision devices, visible light is not necessary for object detection. IR systems are equally effective during day or night use.

The ANIAAQ–26 IDS system produces a composite video signal which is displayed on an onboard television monitor. The IDS provides imagery and accurate line-of-sight information for an operator to detect, acquire, identify, and track targets. Additional capabilities include providing imagery suitable for reconnaissance and low-level navigation. The IDS is capable of detecting very small thermal differences (the exact thermal sensitivity is classified). Three fields-of-view (FOV) are available for the IDS. All are typically used during a mission to survey the area and acquire targets. These are:

- Wide FOV (1.80 magnification) aides in low altitude flight, navigation, and area search, and also provides sufficient resolution to recognize typical terrain features such as roads, rivers, and bridges.
- Medium FOV (10.8 magnification) provides for immediate target area orientation and target detection.
- Narrow FOV (42.9 magnification) provides small target identification, target recognition, and precise line-of-sight angular adjustments. A 2X FOV (85.80 magnification) provides electronic magnification of the Narrow FOV.

The IDS provides pointing information regarding its optical line-of-sight, and features a continuous 360–degree azimuth Field of Regard (FOR) and +60 degree up-look to -105 degree down-look elevation FOR. The line-of-sight is inertial-stabilized with regard to airplane angular motions and is directed to pointing angles via programmed commands, operator commands, or position commands from the avionics systems.

IR and low-light TV systems are used during both daytime and nighttime missions (ambient light is sufficient for the TV system at night). The IDS is the primary detection system and is used during all AC–130 gunship missions. Low-light TV and visual surveys are used to supplement the IDS system as appropriate. The magnification of the TV system is comparable to that of the IDS. Although the IDS is capable of detecting infrared emissions at altitudes in excess of 12,500 ft (3810 m), an altitude range of 6,000 to 9,000 ft (1829 to 2743 m) affords the optimal slant range for overall sensor performance and target orientation.

The sensor suite is considered superior to the human eye for detecting targets on the water surface, even at altitudes as low as 1,000 ft (305 m). This is particularly true for night observations. IR systems have been used to detect whales and dolphins (Baldacci et al., 2005). Although the central portion of cetacean bodies are insulated with blubber, peripheral areas such as the flukes and fins are relatively poorly insulated. These areas may be detected thermally. Also, the movement of a cetacean's body at the surface causes heat to be radiated at different angles, resulting in an apparent temperature difference that can be detected by IR sensors. Additional areas of thermal discrimination include the blowhole, the blow, and areas of water disturbance where water of different temperatures is mixed. However, high humidity, rain, fog, high waves, and whitecap conditions can decrease the effectiveness of IR detection.

Figure 1 in Eglin's January 29, 2007 renewal request illustrates examples of all FOVs for the IDS system, as an operator would see them on a monitor. All examples represent a 7.8–ft (2.4 m) dolphin at 6,000 ft (1829 m) altitude (above ground level, or AGL) and at a slant range of 8,000 ft (2438 m). All four FOVs would be used during protected species surveys. Based on the above discussion, the AC–130 aircrews recommend a protected species survey altitude of 6,000 ft (1829 m), using all sensors, for both day and night missions. NMFS concurs and has made this modification to the 2008 IHA for Eglin's A-S gunnery exercises.

The gunship sensor suite provides the best daytime and nighttime performance in normal weather and sea conditions at this altitude range. At lower altitudes, the sensors' area of coverage is smaller for any given field of view. In addition, the sensors' effectiveness is diminished due to magnification factors. For example, at an altitude of 1,000 ft (305 m), the 2X and Narrow FOV settings would cause over-magnification, resulting in decreased ability to discriminate targets. In addition to considerations of sensor performance, a 6,000–ft (1829–m) survey altitude would be significantly safer than the current 1,000- to 2,000–ft (305- to 610–m)range.

Therefore, based on Eglin AFB's request, NMFS is requiring Eglin to implement a revised protocol for protected species surveys. The AC–130 gunship is to travel to a potential mission location at an altitude of approximately 6,000 ft (1829 m). After arriving at the site, the aircrew is to initiate a surface vessel and protected species survey at the 6,000 ft (1829 m) altitude. The aircraft is to circle the target site and continue the survey for at least 15 min. During the survey, aircrews are to use the ANIAAQ–26 IDS to search the water surface for vessels and marine species. The low-light TV system is to be used to supplement the IDS system. For missions conducted during daylight hours, the aircrew are to visually scan the water surface as well. The live-fire phase of the mission will not begin until the site is determined to be clear of vessels and protected species during the 15-min survey. If a marine mammal, sea turtle or Sargassum bed is identified during the pre-mission survey or during the mission, or if any object besides the target is detected but cannot conclusively be identified, the mission shall be paused or relocated as appropriate. Aircrews shall conduct a post-mission survey for 5 min at an altitude of 6,000 ft (1829 m) using the IDS and low-light television systems and, for daytime missions, visual scans. Eglin AFB considers that the protocol described here would provide effective mitigation to the risks posed to protected species during A-S gunnery missions. In summary, NMFS and Eglin AFB believe that sensor-based observation effectiveness at 6,000 ft (1829 m) altitude is superior to visual survey effectiveness at 1,000 ft (305 m) altitude and can replace the previous mitigation measure.

Ramp-up Procedures

The 2006 IHA stipulates that ramp-up procedures are to be used during A-S gunnery missions. This process involves beginning with the smallest gunnery round, which has the least impact, and proceeding to subsequently larger size rounds. The rationale is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The AC–130 gunship's weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105–millimeter rounds). Eglin AFB believes the 2006 IHA was somewhat ambiguous regarding whether the ramp-up procedure was required only for the first

(calibrating) phase or throughout the entire mission. As a result, Eglin AFB and NMFS concur that the ramp-up procedure should be required for the initial gun calibration, and that after this phase the guns may be fired in any order. Eglin and NMFS believe this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol allows a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This also diminishes the possibility of a lengthy pause in live fire which, if greater than 10 min, would necessitate Eglin's re-initiation of protected species surveys.

Sea State Restrictions

The 2006 IHA states that A-S gunnery missions are to be conducted only in sea states of 3.5 or less on the Beaufort scale. A sea state of 3 or less, with a maximum wind speed of 10 knots (11.5 mph, 18.5 km/hr) which is considered a gentle breeze, is fairly common off the Gulf coast of Florida; however, a large portion of time can be categorized as a sea state of 4 (1–16 knots (13–18 mph, 21–29 km/hr), which is considered a moderate breeze). Therefore, the availability of the EGTTR for air-to-surface gunship use is limited during anything over sea state 3, especially during the winter. Eglin AFB requested gunship missions be allowed in sea states up to 4 on the Beaufort scale. NMFS concurs with this request. Under these conditions, whitecaps are fairly frequent on the sea surface, but sea spray does not occur. Sea spray, whitecaps, and large waves can decrease the effectiveness of LR detection. However, A-S gunnery missions are not conducted if such conditions make observation of the gunnery target (the flare) problematic. Eglin and NMFS expect that marine species can be observed in weather conditions that allow observation of the gunnery target flare. As wave height is difficult to determine from the air, particularly at night, Eglin believes that wind speed, as provided by accepted forecasting outlets such as the National Weather Service, be the determining factor for weather restrictions. NMFS concurs and has made this modification to the 2008 IHA for Eglin's A-S gunnery exercises.

In summary, NMFS concurs with the determinations made by Eglin AFB and has made the following modifications to the mitigation and monitoring measures in the Eglin AFB's A-S Gunnery IHA: (1) amended the requirement for visual surveys to be conducted at a 6,000 ft (1,829 m) altitude as the sensor-based observation effectiveness is superior to visual survey effectiveness; (2) if there is an initial gun calibration period, the ramp-up procedure is required for the initial gun calibration, and that after this phase the guns may be fired in any order; and (3) gunship missions may proceed when sea states are up to 4 on the Beaufort scale.

Determinations

For reasons described in this **Federal Register** document, NMFS has determined that Eglin AFB's A-S gunnery activity will not result in the mortality or injury of marine mammals (see Table 11) and, would result in, at worst, a temporary elevation in hearing sensitivity (known as TTS). As indicated in Table 11, Eglin AFB and NMFS estimate that up to 271 marine mammals may incur Level B (TTS) harassment annually. Also, because these gunnery exercises result in multiple detonations, they have the potential to also result in a temporary modification in behavior by marine mammals at levels below TTS. Based on NMFS' estimates, up to 25 marine mammals may experience a behavioral response to these exercises during the time-frame of an IHA (see Table 11). Finally, while one would generally expect the threshold for behavioral modification to be lower than that causing TTS, due to a lack of empirical information and data, a dual criteria for Level B behavioral harassment cannot be developed. However, to ensure that takings are covered by this IHA, NMFS estimates that approximately 1,000 marine mammals of 16 stocks may incur Level B (harassment) takes during the 1-year period of this IHA. NMFS believes that this number will be significantly lower due the to the expected high effectiveness of the mitigation measures required under the IHA.

NMFS believes therefore, that these A-S gunnery activities will have a negligible impact on the affected species or stocks of marine mammals. NMFS believes that the modifications to the current mitigation requirements will not result in an increase in Level B harassment levels estimated in 2006. The previously discussed modifications (protected species survey altitude, ramp-up procedures, and sea state conditions) to the mitigation measures in Eglin's 2006 IHA for the A-S gunnery exercises in the EGTTR, is unlikely to change NMFS' 2006 determination. Finally, because Eglin AFB's activities will not take place where subsistence uses of marine mammals occur, it would not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses identified in MMPA section 101(a)(5)(D)(i), 16 USC 1371(a)(5)(D)(i).

Endangered Species Act (ESA)

Consultation under section 7 of the ESA on Eglin AFB's A-S Gunnery Missions in the EGTTR was completed on December 18, 1998. Consultation was reinitiated by Eglin AFB with NMFS on February 13, 2003, and concluded on October 20, 2004. A Biological Opinion issued by NMFS on October 20, 2004, concluded that the A-S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has determined that this action, including the modifications to the mitigation and monitoring measures, does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action and reinitiation of consultation is not necessary.

National Environmental Policy Act (NEPA)

The USAF made a Finding of No Significant Impact (FONSI) determination on August 18, 2003, based on information contained within its November, 2002 Final PEA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. The USAF determined, therefore, that an environmental impact statement (EIS) would not be prepared. NMFS noted that Eglin AFB had prepared a Final PEA for the EGTTR activity and made this Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in Eglin AFB's Final PEA and, on May 1, 2006, determined that Eglin AFB's Final PEA accurately and completely described the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine

life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted Eglin AFB's Final PEA under 40 CFR 1506.3 and made its own FONSI on May 16, 2006. The NMFS FONSI also took into consideration updated data and information contained in NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474 (January 23, 2006); 70 FR 48675 (August 19, 2005)). Accordingly, on May 1, 2006, NMFS adopted the USAF EA under 40 CFR 1506.3 and made its own FONSI). This FONSI was signed on May 16, 2006.

As the issuance of a new IHA to Eglin AFB amends three of the mitigation measures for reasons of practicality and safety, NMFS reviewed Eglin AFB's 2002 Final PEA and determined that a new EA was warranted to address: (1) the proposed modifications to the mitigation and monitoring measures; (2) the use of 23 psi as a change in the criterion for estimating potential impacts on marine mammals from explosives; and (3) a cumulative effects analysis of potential environmental impacts from all GOM activities (including Eglin mission activities), which was not addressed in Eglin AFB's 2002 Final PEA. Therefore, NMFS has prepared a new EA and issued a FONSI for this action. Based on these findings, NMFS has determined that it is not necessary to complete an EIS for the issuance of an IHA to Eglin AFB for this activity.

Authorization

NMFS has issued an IHA to Eglin AFB for conducting A-S gunnery exercises within the EGTTR in the northern GOM for a 1-year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: December 11, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 16, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–30519 Filed 12–18–08; 4:15 pm]

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COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 9, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

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COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, January 21, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–30526 Filed 12–18–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 23, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–30528 Filed 12–18–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 30, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–30530 Filed 12–18–08; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Accreditation Requirements for Third Party Conformity Assessment Bodies To Test To the Requirements for Lead Content in Children's Metal Jewelry as Established by the Consumer Product Safety Improvement Act of 2008

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with the 600 parts per million (''ppm'') and 300 ppm lead content limits in metal and metal alloy parts of children's

metal jewelry established by the Consumer Product Safety Improvement Act of 2008.

SUMMARY: The U.S. Consumer Product Safety Commission (''CPSC'' or ''Commission'') today publishes requirements pursuant to the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), Public Law 110–314, for accreditation of third party conformity assessment bodies to test to the 600 ppm and 300 ppm lead limits in metal and metal alloy parts of children's metal jewelry established by CPSIA. The Commission is not at this time addressing third party testing to the 100 ppm lead limit that may come into force three years after the date of enactment of CPSIA, depending on technological feasibility.

DATES: *Effective Date:* These requirements for accreditation of laboratories to test to the 600 ppm and 300 ppm lead limits in children's metal jewelry are effective December 22, 2008.

Request for Comments: Please provide comments in response to this notice by January 21, 2009. Comments on this notice should be captioned ''Laboratory Accreditation Process for Testing for Lead Content in Children's Metal Jewelry.'' Comments should be submitted to the Office of the Secretary by e-mail at *Leadaccredjewelry@cpsc.gov*, or mailed or delivered, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Robert ''Jay'' Howell, Acting Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Consumer Product Safety Act (''CPSA''), at section 14(a)(3)(B)(iv) as added by section 102(a)(2) of CPSIA, directs the Commission to publish this notice of requirements for accreditation of third party conformity assessment bodies (''third party laboratories'') to test children's metal jewelry for conformity with the 600 ppm and 300 ppm limits on lead content at section 101(a)(2) of CPSIA.[1]

Under section 101(a)(2) of CPSIA, a limit of 600 ppm of lead in any part of a children's product, including an item of children's metal jewelry, becomes effective on February 10, 2009.[2] Each importer or U.S. domestic manufacturer of such products manufactured on or after that date must issue a certificate of conformity with the 600 ppm limit.[3] That certificate must be based on a test of each product or a representative testing program. Use of a third party laboratory whose accreditation has been accepted by the Commission is not yet required.

Subsequently, for children's metal jewelry products manufactured after March 23, 2009, each importer and domestic manufacturer must have metal and metal alloy parts of such products tested by a laboratory whose accreditation to do so has been accepted by the Commission in accordance with this notice and must issue a certificate of compliance with the 600 ppm lead limit for the metal and metal alloy parts of the jewelry based on that testing.[4 5] When the 300 ppm limit of section 101(a)(2)(B) of CPSIA goes into force on August 14, 2009, each importer and domestic manufacturer of children's metal jewelry subject to that limit must have metal and metal alloy parts of such products tested by a laboratory whose accreditation to do so has been accepted by the Commission and must issue a certificate of compliance with the limit based on that testing.[6]

This notice provides the criteria and process for Commission acceptance of accreditation of ''third party'' laboratories for testing to the 600 ppm and 300 ppm lead content limits (laboratories that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes), ''firewalled'' laboratories (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory for certification purposes and that seek accreditation under the additional statutory criteria for ''firewalled'' laboratories), and laboratories owned or controlled in whole or in part by a government.

The requirements of this notice are effective upon its publication in the **Federal Register** and are exempted by CPSIA from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.[7]

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site.

Although the accreditation requirements in this notice for testing for lead content in children's metal jewelry are effective upon their publication in the **Federal Register**, the Commission solicits comments on the accreditation procedures as they apply to that testing and on the accreditation approach in general, since the Commission must publish additional testing laboratory accreditation procedures over the coming months.

II. Accreditation Requirements

A. Baseline Third Party Laboratory Accreditation Requirements

Baseline accreditation of each category of laboratory to the International Organization for Standardization (''ISO'') Standard ISO/IEC 17025:2005—General Requirements for the Competence of Testing and Calibration Laboratories—is required. The accreditation must be by an accreditation body that is a signatory to

[1] Section 102 of CPSIA also required the Commission to publish requirements for accreditation of laboratories for testing to the lead paint ban at 16 CFR part 1303, for testing to the Commission's regulations for full-size baby cribs at 16 CFR part 1508 and for non-full-size baby cribs at 16 CFR part 1509, for pacifiers at 16 CFR part 1511, and for small parts at 16 CFR part 1501. The requirements for accreditation for testing to the lead paint ban were published in the **Federal Register** on September 22, 2008. 73 FR 54564–6. The requirements for accreditation for testing to the crib and pacifier regulations were published in the **Federal Register** on October 22, 2008. 73 FR 62965–7. The requirements for accreditation to test to the small parts regulations were published in the **Federal Register** on November 17, 2008. 73 FR 76838–40.

[2] CPSIA defines a children's product as a consumer product designed or intended primarily for children 12 years of age or younger. CPSIA section 235(a) to be codified at CPSA section 3(a)(2).

[3] On November 18, 2008, the Commission published in the **Federal Register** an immediately final rule that limited the parties that must issue the certifications required by section 14 of the CPSA as amended by CPSIA to the importer and the domestic manufacturer, as applicable. See 73 FR 68 328–32 (to be codified as 16 CFR part 1110). Further information on the form and content of the required certificates is available at *http://www.cpsc.gov/about/cpsia/faq/elecertfaq.pdf*.

[4] Section 14(a)(2) of the CPSA as added by section 102(a)(2) of CPSIA mandates that the required third party testing be conducted on ''sufficient samples'' of the product, or ''samples that are identical in all material respects'' to the product.

[5] Commission technical staff is working to develop accurate and repeatable test methods for quantifying lead in non-metal parts of children's products, including children's metal jewelry. Those methods will be posted on the CPSC Web site as soon as that work is completed.

[6] Of course, irrespective of certification, the product in question must comply with applicable CPSC requirements. See e.g., CPSA section 14(h) as added by CPSIA section 102(b).

[7] CPSA section 14(a)(3)(G) as added by section 102(a)(2) of CPSIA exempts publication of this notice from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and from the Regulatory Flexibility Act, 5 U.S.C. 601–612.

the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (''ILAC–MRA'') and the scope of the accreditation must include testing for lead content in metal and metal alloy parts of children's metal jewelry in accordance with the *CPSC Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (including Children's Metal Jewelry)*, CPSC–CH–E1001–08, available at *http://www.cpsc.gov/about/cpsia/CPSC-CH-E1001-08.pdf*.[8] [9] A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html*

A true copy in English of the accreditation and scope documents demonstrating compliance with these requirements must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental laboratories are described below in sections II.B and II.C.

The Commission will maintain on its Web site an up-to-date listing of laboratories whose accreditations it has accepted and the scope of each accreditation. Once the Commission adds a laboratory to that list, the laboratory may commence testing to support certification by the importer or domestic manufacturer of compliance with the 600 ppm and 300 ppm lead content limits on metal and metal alloy parts of children's metal jewelry based on third party testing.

B. Additional Accreditation Requirements for Firewalled Laboratories

In addition to the baseline accreditation requirements in section II.A, firewalled laboratories seeking accredited status must submit to the Commission for review copies in English of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over the laboratory's test results. This additional requirement applies to any laboratory in which a manufacturer or private labeler of children's metal jewelry to be tested by the laboratory for conformity with lead content requirements to support certification owns a ten percent or greater interest. While the Commission is not addressing common parentage of a lab and a children's product manufacturer at this time, it will continue to be vigilant to see if this issue needs to be dealt with in the future.

The Commission must formally accept, by order, the accreditation application of a laboratory before the laboratory can become an accredited firewalled laboratory.

C. Additional Accreditation Requirements for Governmental Laboratories

In addition to the baseline accreditation requirements of section II.A, CPSIA permits accreditation of a laboratory owned or controlled in whole or in part by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose laboratories that are not owned or controlled by the government of that nation;
- The laboratory's testing results are not subject to undue influence by any other person, including another governmental entity;
- The laboratory is not afforded more favorable treatment than other laboratories in the same nation who have been accredited;
- The laboratory's testing results are not subject to undue influence by any other person, including another governmental entity;
- The laboratory is not accorded more favorable treatment than other laboratories in the same nation who have been accredited;
- The laboratory's testing results are accorded no greater weight by other governmental authorities than those of other accredited laboratories; and
- The laboratory does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the laboratory's conformity assessments.

The Commission will accept the accreditation of a governmental laboratory if it meets the baseline accreditation requirements of section II.A and meets the conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How Does a Laboratory Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/about/cpsia/labaccred.html*. The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement and firewalled laboratory training document(s), if relevant. Commission staff reviews that submission for accuracy and completeness. In the case of baseline third party laboratory accreditation and accreditation of governmental laboratories, when that review and any necessary discussions with the applicant are satisfactorily completed, the laboratory in question is added to the CPSC listing of accredited laboratories at *http://www.cpsc.gov/about/cpsia/labaccred.html*. In the case of a firewalled laboratory seeking accredited status, when the review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration.[10] If the Commission accepts a staff recommendation to accredit a firewalled laboratory, that laboratory will then be added to the CPSC list of accredited laboratories. In each case, the Commission will electronically notify the laboratory of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Once the Commission adds a laboratory to the list, the laboratory may then commence testing of children's products to support certification of compliance with the requirements for lead content in metal and metal alloy parts of children's metal jewelry by the importer or U.S. domestic manufacturer.

[8] A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum *Accreditation Requirements for Third Party Conformity Assessment Bodies to Test to the Requirements for Lead Content in Children's Metal Jewelry as Established by the Consumer Product Safety Improvement Act of 2008*, December 2008, available on the CPSC Web site at *http://www.cpsc.gov/library/foia/foia09/brief/leadjewelry.pdf*.

[9] The Commission received comments recommending that, in addition to ILAC–MRA signatories, it consider accepting laboratory accreditations by accrediting bodies that are members of other organizations. The staff is assessing these comments. At this point, the staff continues to recommend acceptance of laboratory accreditations only by ILAC–MRA signatory accrediting bodies.

[10] A laboratory that may ultimately seek acceptance as a firewalled laboratory could initially request acceptance as a third party laboratory accredited for testing for lead content in children's metal jewelry other than for such products manufactured or private labeled by its owners.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Laboratory Testing Prior to Commission Acceptance of Accreditation

The Commission will accept a certificate of compliance with the lead content limits in metal and metal alloy parts of children's metal jewelry based on total lead content testing performed by an accredited third party or governmental laboratory on or after May 16, 2008 (90 days prior to August 14, 2008, the date on which CPSIA was enacted) and thus prior to the Commission's acceptance of the laboratory's accreditation if:

- The laboratory was ISO/IEC 17025 accredited by an ILAC–MRA member at the time of the test;
- The accreditation scope in effect for the laboratory at that time expressly included testing using the February 3, 2005 CPSC Laboratory SOP for Determining Total Lead Content in Children's Metal Jewelry at *http://www.cpsc.gov/businfo/pbjeweltest.pdf* and/or the 2008 CPSC Laboratory SOP for Determining Total Lead Content in Children's Metal Jewelry, CPSC-CH-E1001-08, available at *http://www.cpsc.gov/about/cpsia/CPSC–CH–E1001–08.pdf;*
- Total lead testing was conducted and the analytical results of the testing for total lead do not exceed the 600 ppm or 300 ppm total lead limit, as applicable;
- The laboratory's accreditation application is accepted by the Commission under the procedures of this notice not later than February 20, 2009; and
- The laboratory's accreditation and inclusion of the reference to the 2005 and/or the 2008 CPSC Laboratory SOP for Determining Total Lead Content in Children's Metal Jewelry in its scope remains in effect through the effective date for mandatory third party testing and certification for limits on total lead content in children's metal jewelry as established by the CPSIA.

Testing performed by a firewalled laboratory prior to Commission acceptance of its accreditation cannot be used as the basis for certification pursuant to CPSA section 14(a)(3)(B)(iv) by an importer or U.S. domestic manufacturer with a 10 percent or greater ownership interest in the laboratory of compliance with the lead content limits in metal and metal alloy parts of children's metal jewelry.

Dated: December 16, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E8–30255 Filed 12–19–08; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2008-OS–0161]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to Delete Two Systems of Records.

SUMMARY: The Defense Information Systems Agency is deleting two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 21, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933-I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Information Systems Agency proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 16, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

K105.01

Confidential State of Notice and Financial Interest (February 22, 1993, 58 FR 10562).

REASON:

Defense Information Systems Agency is using the Government-wide Systems of Records ''OGE/GOVT 1'' and OGE/GOVT 2'' that covers the SF 278 Form and the OGE 450 Form for all of the Federal government. Agency-specific systems of records are no longer necessary.

K232.01

Travel Orders Records System (February 22, 1993, 58 FR 10562).

REASON:

The Defense Finance and Accounting maintains a DoD-Wide notice, Defense Travel System which was published in the **Federal Register** on September 8, 2004, 69 FR 54272.

[FR Doc. E8–30417 Filed 12–19–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Air Force

[Docket ID: USAF–2008–0050]

Privacy Act of 1974; System of Records

AGENCY: Department of Air Force.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 21, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the

submission of a new or altered system report.

Dated: December 16, 2008.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FO 33 AFRC A

SYSTEM NAME:

Reserve Participation Management Systems (March 7, 2007, 72 FR 10185).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Reserve Participation Management System Records.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Reservist and Individual Mobilization Augmentees (IMAs), as well as other Air Force or Air Force Reserve military and civilian personnel that require access.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Full name, Social Security Number (SSN), address, organization name, e-mail address, skills, biography, assignment history, duty types and dates.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 10204, Personal Records; Air Force Policy Directive 36–26, Military Force Management; and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''To assist officials and employees of the Air Force Reserve, and other Air Force officials, who have official duties related to the management, supervision, and administration of Air Force Reserve personnel, and/or in the operation of personnel affairs and functions related to Air Force Reserve members.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Department of the Air Force, ReserveNet Program Manager, Headquarters United States Air Force Reserve Command (AFRC), Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Headquarters, United States Air Force Reserve Command, HQ AFRC/A6NS, Communications Directorate, Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

Written request should include full name, address, Social Security Number (SSN) and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''To determine whether this system contains information on themselves individuals should address written inquiries to Headquarters, United States Air Force Reserve Command, HQ AFRC/A6NS, Communications Directorate, Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

Written request should include full name, address, Social Security Number (SSN) and signature.''

* * * * *

F0 33 AFRC A

SYSTEM NAME:

Reserve Participation Management System Records.

SYSTEM LOCATION:

Headquarters, United States Air Force Reserve Command (AFRC), 155 Richard Ray Blvd., Building 210, Robins AFB, GA 31098–1635.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reservist and Individual Mobilization Augmentees (IMAs), as well as other Air Force or Air Force Reserve military and civilian personnel that require access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, Social Security Number (SSN), address, organization name, e-mail address, skills, biography, assignment history, duty types and dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 10204, Personal Records; Air Force Policy Directive 36–26, Military Force Management; and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Air Force Reserve, and other Air Force officials, who have official duties related to the management, supervision, and administration of Air Force Reserve personnel, and/or in the operation of personnel affairs and functions related to Air Force Reserve members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by name and Social Security Number (SSN).

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Data stored digitally is retained until a member leaves the Air Force Reserve. Non-active data records are digitally archived within the system until it is determined it can be disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Air Force, ReserveNet Program Manager, Headquarters United States Air Force Reserve Command (AFRC), Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Headquarters, United States Air Force Reserve Command, HQ AFRC/A6NS, Communications Directorate, Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

Written request should include full name, address, Social Security Number (SSN) and signature.

RECORD ACCESS PROCEDURES:

To determine whether this system contains information on themselves

individuals should address written inquiries to Headquarters, United States Air Force Reserve Command, HQ AFRC/A6NS, Communications Directorate, Building 210, 155 Richard Ray Blvd., Robins AFB, GA 31098–1635.

Written request should include full name, address, Social Security Number (SSN) and signature.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records and for contesting and appealing initial agency determinations are published in AFI 33–332; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals or authorized Air Force/DoD automated systems such as the Military Personnel Data System (MILPDS), the Air Force Fitness Management System, and the Preventive Heath Assessment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–30416 Filed 12–19–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Army Growth at Fort Lewis and the Yakima Training Center (YTC), WA

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Army intends to prepare an EIS to analyze the environmental and socioeconomic impacts of implementing the stationing and realignment decisions in the 2007 ''Grow the Army'' Programmatic EIS (GTA PEIS) and other ongoing Army realignment and stationing initiatives that pertain to Fort Lewis and YTC. The GTA PEIS Record of Decision (ROD) made the decision to station additional units at Fort Lewis including an Expeditionary Sustainment Command, and specified unit restructuring actions that would increase active duty strength at Fort Lewis by approximately 1,900 Soldiers. This EIS will also analyze Fort Lewis and YTC as potential locations for the stationing of additional units, to include approximately 1,000 combat service support (CSS) Soldiers consisting of Quartermaster, Medical, Transportation or Headquarters units to support combat operations, and a Combat Aviation Brigade (CAB) consisting of approximately 2,800 soldiers and 110 helicopters. These actions could occur over the next five years.

ADDRESSES: Questions regarding this proposal or written comments should be forwarded to: Department of the Army, Directorate of Public Works, Attention: IMWE–LEW–PWE MS 17 (Mr. Paul T. Steucke, Jr.), Box 339500, Fort Lewis, WA 98433–9500.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Van Hoesen, Fort Lewis NEPA Coordinator at (253) 966–1780 during business hours (8 a.m. to 4 p.m., Monday through Friday).

SUPPLEMENTARY INFORMATION: Fort Lewis is a major Army installation (one of 15 U.S. power projection platforms) encompassing 86,176 acres in western Washington, approximately 35 miles south of Seattle. The 327,231 acre YTC is a sub-installation of Fort Lewis located about 7 miles northeast of the City of Yakima in central Washington. Fort Lewis and YTC are important Army facilities for weapons qualification and field training. In addition to the units stationed there, Reserve and National Guard units, as well as units from allied nations, train at Fort Lewis and YTC.

Stationing and force structure realignment actions across the Army were identified in the GTA PEIS that would increase the Army by approximately 74,000 Soldiers in the next five years. In addition to analyzing the effects of implementing the proposed GTA decisions pertaining to Fort Lewis and YTC, this EIS will analyze the effects from related stationing and force structure decisions of ongoing Army initiatives interconnected with and essential to implementing the GTA decisions. These ongoing initiatives are the Base Realignment and Closure Act of 2005, the Global Defense Posture Realignment, and transition to the Army Modular Force. These actions include stationing and unit restructuring, increased intensity of use of maneuver and live-fire training areas, and construction activity. New construction will be required for new training facilities and ranges; cantonment area development projects such as troop and family housing, administrative facilities, motor pools, child development centers; and infrastructure upgrades.

The EIS will evaluate a range of reasonable alternatives and their subsequent potential environmental impacts resulting from the proposed construction and training activities in order to support the potential stationing of additional CSS units and a CAB. Under the No Action alternative, the proposed site-specific actions to implement the decisions of the GTA and related Army initiatives would not be implemented. Other alternatives may be identified as part of the public scoping process initiated by this NOI.

An impact analysis will be performed for a wide range of environmental resource areas including, but not limited to, air quality, water quality, cultural resources, sensitive species and habitats, soil erosion, traffic and transportation, noise, socioeconomics, land use, utilities, and solid and hazardous materials/waste. The impact analysis will include consideration of the direct, indirect and cumulative impacts of the proposed action and reasonable alternatives. Additional resources and conditions may be identified as a result of the scoping process initiated by this NOI.

Public Participation: The public will be invited to participate in the scoping process, which includes scoping meetings, and encouraged to provide input on the proposed actions and alternatives in the EIS. The scoping process is intended to assist the agency in identifying, among other things, important issues of environmental concern and reasonable alternatives to the proposed action. The public will also be invited to review and comment on the Draft EIS. These public involvement opportunities will be announced in the local news media. To ensure comments are fully considered in the Draft EIS, comments and suggestions should be received no later than 45 days following publication of this NOI. The process will be concluded by preparation of a Final EIS and a ROD choosing a particular course of action.

Dated: December 12, 2008.

Addison D. Davis IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. E8–30174 Filed 12–19–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board 2009 January Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR

102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of January Plenary Meeting: January 13–14, 2009.

Time(s) of Meeting: 0800–1700, January 13, 2009. 0800–1500, January 14, 2009.

Place of Meeting: University of Maryland University College, Inn and Conference Center, 3501 University Boulevard East, Adelphi, MD 20783.

FOR FURTHER INFORMATION CONTACT: Army Science Board Studies Manager: Ms. Vivian Baylor, 703–604–7472.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The purpose of the January Plenary is to organize the board into study panels for the upcoming study year. After a presentation by Army Research Laboratory, the board will convene into small groups for the purpose of completing administrative and preparatory organizational functions.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Subcommittees. Individuals submitting a written statement must submit their statement to the Designated Federal Officer (DFO) at the address detailed below. Written statements not received at least 10 calendar days prior to the meeting, may not be provided to or considered by the subcommittees until the next meeting.

The DFO will review all timely submissions with the subcommittee Chairs and ensure they are provided to the specific subcommittee members before the meeting. After reviewing written comments, the subcommittee Chairs and the DFO may choose to invite the submitter of the comments to orally present their issue during a future open meeting.

The DFO, in consultation with the subcommittee Chairs, may allot a specific amount of time for the members of the public to present their issues for review and discussion. Written submissions are to be submitted to the following address: Army Science Board, ATTN: Designated Federal Officer, 2511 Jefferson Davis Highway, Suite 11500, Arlington, VA 22202–3911.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–30364 Filed 12–19–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Balanced Vision Plan, a Multipurpose Project Containing Ecosystem Restoration, Flood Risk Management, and Recreational Enhancement Alternatives Along the Trinity River Within and Adjacent to the Existing Dallas Floodway in Dallas County, Dallas, TX

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Fort Worth District, in partnership with the City of Dallas recommends the incorporation of various flood risk management measures, ecosystem restoration features, and recreational enhancements to the Dallas Floodway, located along the Trinity River in Dallas County, Dallas, TX. The Balanced Vision Plan (BVP) project aims to achieve the designed Standard Project Flood protection, maximize ecosystem restoration outputs for priority resource categories, and optimize recreational opportunities, to include providing trail connectivity to other regional visions/plans.

The USACE is preparing a Draft Environmental Impact Statement (DEIS) in response to the authority contained in the United States Senate Committee on Environment and Public Works Resolution dated April 22, 1988, and Section 5141 of the Water Resources Development Act (WRDA) of 2007. The USACE must determine the technical soundness and environmental acceptability of the authorized project. Thus, in accordance with Section 102 of the National Environmental Policy Act (NEPA) as implemented by the regulations promulgated by the Council on Environmental Quality (40 Code of Federal Regulations Parts 1500–1508 and USACE Engineering Regulation 200–2–2), the USACE will prepare the DEIS to evaluate and compare flood risk management, ecosystem restoration, and recreation alternatives along the Trinity River within and adjacent to the existing Dallas Floodway, Dallas, TX.

The BVP project study area is located within the Dallas Floodway along the Trinity River, in Dallas, TX. The study area is bounded on the upstream by the Loop 12 crossings of the West and Elm Forks and at the downstream end by the existing terminus of the Dallas Floodway approximated by the existing Dallas Area Rapid Transit (DART) Bridge. Of the 22.6 miles of levees within the study area, the East Levee is 11.7 miles in length and the West Levee is 10.9 miles in length. In addition to the levees, the Floodway includes the modified channel, six pumping plants and seven pressure conduits. There are approximately 1,422 acres of land in the study area.

FOR FURTHER INFORMATION CONTACT: For questions regarding the BVP EIS or to add your contact information to the project mailing database, please contact Mr. Jeffry A. Tripe, Regional Technical Specialist, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX, 76102–0300, (817) 886–1716, or via e-mail at *Jeffry.A.Tripe@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Dallas County Levee Improvement District (DCLID) constructed the original Dallas Floodway levees between 1928 and 1931. The DCLID rerouted the Trinity River by constructing a channel within the leveed floodway and filled the original river channel or used it for sump storage. In the mid-forties, major floods, compounded by continued urbanization in the watershed, resulted in increased drainage into the Dallas Floodway and severe flooding. To reduce flooding within the Dallas Floodway project area, Congress authorized the Dallas Floodway flood control project in 1945 and 1950. This resulted in several USACE improvements to the Dallas Floodway, completed in 1958.

The existing Upper Trinity River Feasibility Study (UTRFS) serves as an umbrella study to all USACE projects in the basin. The USACE initiated the UTRFS in response to the authority contained in the United States Senate Committee on Environment and Public Works Resolution dated April 22, 1988. This authorizing legislation for the overall study defines the area of investigations as the Upper Trinity River Basin, with specific emphasis on the Dallas—Fort Worth Metroplex. The UTRFS identified approximately 90 potential projects addressing flood risk management, ecosystem restoration, and recreation within the study area.

In May 1996, acting as the non-Federal sponsor on the on-going UTRFS, the North Central Texas Council of Governments coordinated with the USACE and City of Dallas to modify the UTRFS Cost Sharing Agreement to include an Interim Feasibility Study of the existing Dallas Floodway as part of the on-going UTRFS. The team assessed several flood risk management

alternatives in the Dallas Floodway Interim Feasibility Study. The USACE and City of Dallas also developed additional environmental quality alternatives to benefit fish and wildlife habitat, water quality, and aesthetic properties while minimizing adverse impacts to existing cultural resources and flood risk management benefits. On November 29, 2005, the USACE published a Notice of Intent (NOI) in the **Federal Register** (70 FR 71477) to prepare a DEIS for proposed modifications to the existing Dallas Floodway based on the Interim Feasibility Study and held a public scoping meeting on December 13, 2005.

During this time, the City of Dallas developed another variation to the Trinity River Corridor Master Implementation Plan that included similar environmental quality measures and interior drainage system improvements to the Dallas Floodway, referred to as the BVP. During development of the various alternatives for the Dallas Floodway Interim Feasibility Study, the 2007 WRDA authorized the City of Dallas BVP. This authorization superseded the need to continue development of the Interim Feasibility Study and allowed implementation of the BVP and interior drainage system components if the USACE determines they are technically sound and environmentally acceptable.

In accordance with NEPA, a DEIS will be prepared to evaluate and compare ecosystem restoration, flood risk management, and recreation alternatives within and along the Dallas Floodway. The DEIS will also assess the impacts to the quality of the human environment associated with each alternative. Past channelization and clearing of the Dallas Floodway, along with urbanization, has significantly degraded the terrestrial and aquatic habitat along and within the Trinity River. Consequently, ecosystem restoration measures will be developed and evaluated to address the degraded habitats. In addition, recreation measures will be developed and evaluated as complements to proposed ecosystem restoration measures.

Alternatives for ecosystem restoration, flood risk management, and recreation enhancement will be developed and evaluated based on ongoing fieldwork and data collection and past studies conducted by the Corps of Engineers, the City of Dallas, and regulatory agencies. Ecosystem restoration alternatives that will be evaluated include creating meanders within the Trinity River, restoring, protecting and expanding the riparian corridor, improving aquatic habitat, creating riffle-pool complexes, and constructing wetlands. It is anticipated that ecosystem restoration measures would help improve water quality, enhance aquatic and terrestrial habitat, and minimize erosion and scouring along and within the river.

Alternatives for flood risk management measures will be evaluated from both a non-structural and structural aspect. Non-structural measures that will be evaluated include acquisition and removal of structures or flood proofing of structures for protection from potential future flood damage. Structural measures that will be evaluated include levee height modification by fill or addition of flood walls, changes in interior drainage by enlarging storage areas or increasing widths and depths and/or a combination of these measures.

Recreation measures that will be evaluated include the West, Natural, and Urban lakes, terraced playing fields, multipurpose trails, whitewater facilities, pedestrian bridges, utilities, parking facilities, amphitheaters, promenade, concession pads, boat/canoe access points, and passive recreation features, such as interpretive guidance, media, and picnic areas. Recreation measures will be developed to a scope and scale compatible with proposed ecosystem restoration measures without significantly diminishing ecosystem benefits.

The USACE will coordinate with the public and regulatory agencies to ensure full and open participation in the NEPA process and aid in the development of the DEIS. The USACE requests that all affected Federal, state, and local agencies, affected Indian tribes, and other interested parties participate in the NEPA process. The public will be invited to participate in the scoping process, invited to attend public meetings, and given the opportunity to review the DEIS. The location and time of the first public scoping meeting will be announced in the local news media. Release of the DEIS for public comment is scheduled for summer 2010. The exact release date, once established, will be announced in the local news media. Furthermore, a project Web site containing project information is available at *http://www.dallasbvpeis.com.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–30355 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Final 1999 Programmatic Environmental Impact Statement for the Dredged Material Management Plan for the Port of New York and New Jersey

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

ACTION: Updated information on the original Notice of Availability listing.

SUMMARY: The responsible lead agency is the U.S. Army Corps of Engineers—New York District (District). The Dredged Material Management Plan (DMMP) project area is in the Port of New York/New Jersey and includes the New York Bight Apex, the Lower Bay Complex (Lower Bay, Raritian and Sandy Hook Bays), the Upper Bay Complex (Hudson and East Rivers, Kill Van Kull, and Newark Bay), and the lands contiguous to these water bodies for a radius of approximately 20 miles. The study area approximates the boundaries of the Port Authority of New York and New Jersey (PANY/NJ). The Final Programmatic Environmental Impact Statement (PEIS) that was listed in the October 31, 2008 **Federal Register** (73 FR 64944) completed the NEPA process, laying out the goals and generic impacts of the alternatives considered in preparing the overall DMMP. This finalized PEIS includes Appendix (D) which lists the comments received during the draft PEIS comment period. Comments, if warranted, were incorporated into the main text of the final PEIS as well.

It should be noted that the DMMP outlines a series of goals and an overall master plan on meeting the dredged material needs of the Port through 2062. Its alternatives analysis is, as of necessity, generic in nature, identifying potential concerns, generic impacts and overall issues to be considered in greater site-specific detail before implementing any alternative in a given location. As such, it does not recommend or prioritize any site-specific alternative, but clearly sets out the process to be followed should any of the alternatives be implemented. Since no sustentative changes or addition of new alternatives to the DMMP have been identified that would alter the discussion or conclusion of generic impacts in the FPEIS, a supplemental PEIS was not deemed warranted. However, separate 2005 and 2008 DMMP Update reports are available tracking the progress in meeting the DMMP goals and a copy of

the latest update is included with the Final PEIS as Appendix A. As individual site-specific projects are initiated to implement various DMMP goals individual NEPA and/or permit documents will continue to be prepared by the implementing agencies.

DATES: The formal comment period for the Final PEIS has been extended to February 1, 2009. Comments received will be considered by the District in decision-making for the Final PEIS's Record of Decision.

ADDRESSES: Additional requests for the DMMP and Final PEIS can be made by post card to the following address: U.S. Army Corps of Engineers, New York District, Planning Division-Environmental Analysis Branch, Jacob K. Javits Federal Building, 26 Federal Plaza—Room 2151, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Christopher Ricciardi, Ph.D., Environmental Coordinator can be contacted at (917) 790–8630 or by e-mail at *christopher.g.ricciardi@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Several authorities exist to conduct navigation studies and maintain the New York Harbor, these include the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401–466n), the Federal Water Pollution Control Act of 1972 (Clean Water Act-CWA), and the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA). With respect to the preparation of the DMMP, District planning guidance stated in EC1165–2–200 requires each district to maintain responsibility for preparation of long-term plans to maintain navigation projects.

The New York/New Jersey Harbor encompasses approximately two-dozen separately authorized and maintained Federal navigation channels. These projects, which range in authorized depth from 8–50 feet, combined with privately operated berthing areas have historically generated 2–4 million cubic yards of dredged material annually from maintenance of required depths. Further, several of these channels are either under construction or in the planning phase for deepening in the upcoming years to accommodate larger vessels that will need to use the Port. The construction of these deeper channels will generate substantial amounts of dredged material. The 2008 DMMP Update seeks to identify options to manage the material generated from both the Federal and non-Federal maintenance and deepening of the Port through the year 2065.

The District held scoping meetings with the public on this plan during February and April 1997. A Notice of Intent (NOI) to produce a PEIS including an outline of the scope was published in the **Federal Register** on February 24, 1998. Subsequently, meetings on the topics to be covered in the Draft PEIS were held during April 1998. Written comments were considered in the promulgation of the Draft PEIS.

After distribution of the Draft PEIS to the public during September 1999, four public meetings on the document were held during November 1999. Written comments and taped verbal statements gathered at these meetings, letters and e-mails received during the comment period were considered in the promulgation of the Final PEIS.

The DMMP also considered the Harbor Estuary Program (HEP) and its Comprehensive Conservation and Management Plan (CCMP) that was signed by the agencies with responsibilities for the Port and its environment. Further, for the last several years the New York/New Jersey Regional Dredging Team (RDT), comprised of representatives from the District, PANY/NJ, the States of NY and NJ, and the USEPA, has been meeting monthly to discuss current and future needs and disposal/management options. The RDT will continue to coordinate in order to keep abreast of current and developing placement opportunities and technologies as the DMMP is implemented.

The 2008 DMMP Update and Final 1999 PEIS are available on CD in PDF format and are downloadable through the District's Web page: *http://www.nan.usace.army.mil/business/prjlinks/dmmp/index.htm.*

Printed copies of the DMMP and Final PEIS are also available upon request.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–30368 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Small Diversion at Convent/Blind River Project

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Small Diversion at Convent/Blind River restoration project. This restoration project involves a small diversion (less than 5,000 cubic feet per second [cfs]) from the Mississippi River into the Blind River through a new control structure. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2540; fax: (504) 862–1583; or by e-mail: *william.p.klein.jr@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e)(3) instructs the Secretary of the Army to submit feasibility reports to Congress on six elements of the LCA near-term restoration plan by December 31, 2008. The six elements are: (1) Multipurpose Operation of Houma Navigation Lock, (2) Terrebonne Basin Barrier Shoreline Restoration, (3) Small Diversion at Convent/Blind River, (4) Amite River Diversion Canal Modification, (5) Medium Diversion at Whites Ditch, and (6) Convey Atchafalaya River Water to

Northern Terrebonne Marshes. The Congressional language further authorizes construction of these six elements contingent upon completion of a favorable report of the Chief of Engineers, no later than December 31, 2010, and subsequent submission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action.* The Small Diversion at Convent/Blind River restoration project proposes the construction of a small diversion (less than 5,000 cfs) from the Mississippi River into Blind River through a new control structure. The objective of this restoration project is to introduce sediments and nutrients into the southeast portion of Maurepas Swamp. This project is intended to operate in conjunction with the Hope Canal diversion to facilitate organic deposition in the swamp, improve biological productivity and prevent further swamp deterioration.

3. *Public Involvement.* Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in January 2009.

5. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS.* The earliest that the draft SEIS will be available for public review would be in spring of 2010. The draft SEIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: December 11, 2008.

Mark D. Jernigan,

Lieutenant Colonel, U.S. Army, Deputy District Commander.

[FR Doc. E8–30356 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Amite River Diversion Canal Modification Feasibility Study

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Amite River Diversion Canal Modification restoration project. This restoration project will introduce additional nutrients and sediment into the western Maurepas Swamp to facilitate organic deposition in the swamp, improve biological productivity and prevent further swamp deterioration. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2540; fax: (504) 862–1583; or by e-mail: *william.p.klein.jr@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for

implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e)(3) instructs the Secretary of the Army to submit feasibility reports to Congress on six elements of the LCA near-term restoration plan by December 31, 2008. The six elements are: (1) Multipurpose Operation of Houma Navigation Lock, (2) Terrebonne Basin Barrier Shoreline Restoration, (3) Small Diversion at Convent/Blind River, (4) Amite River Diversion Canal Modification, (5) Medium Diversion at Whites Ditch, and (6) Convey Atchafalaya River Water to Northern Terrebonne Marshes. The Congressional language further authorizes construction of these six elements contingent upon completion of a favorable report of the Chief of Engineers, no later than December 31, 2010, and subsequent submission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action.* The Amite River Diversion Canal Modification restoration project proposes the construction of gaps in the existing dredged material banks of the Amite River Diversion Canal. The objective of the restoration project is to allow floodwaters to introduce additional nutrients and sediment into the western Maurepas Swamp. The exchange of flow would occur during flood events on the river and from runoff of localized rainfall events. This project would provide nutrients and sediment to facilitate organic deposition in the swamp, improve biological productivity and prevent further swamp deterioration.

3. *Public Involvement.* Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in January 2009.

5. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS.* The earliest that the draft SEIS will be available for public review would be in spring of 2010. The draft SEIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: December 11, 2008.

Mark D. Jernigan,

Lieutenant Colonel, U.S. Army, Deputy District Commander.

[FR Doc. E8–30357 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Convey Atchafalaya River Water to Northern Terrebonne Marshes Feasibility Study

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Convey Atchafalaya River Water to Northern Terrebonne Marshes restoration project. This restoration project will increase existing Atchafalaya River influence to central (Lake Boudreaux) and eastern (Grand Bayou) Terrebonne marshes via the GIWW by introducing flow into the Grand Bayou Basin. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Nathan S. Dayan., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2530; fax: (504) 862–1583; or by e-mail: *Nathan.S.Dayan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority.* This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on

November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e)(3) instructs the Secretary of the Army to submit feasibility reports to Congress on six elements of the LCA near-term restoration plan by December 31, 2008. The six elements are: (1) Multipurpose Operation of Houma Navigation Lock, (2) Terrebonne Basin Barrier Shoreline Restoration, (3) Small Diversion at Convent/Blind River, (4) Amite River Diversion Canal Modification, (5) Medium Diversion at Whites Ditch, and (6) Convey Atchafalaya River Water to Northern Terrebonne Marshes. The Congressional language further authorizes construction of these six elements contingent upon completion of a favorable report of the Chief of Engineers, no later than December 31, 2010, and subsequent subsission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action.* The Convey Atchafalaya River Water to Northern Terrebonne Marshes restoration project proposes enlarging the connecting channels (Bayou L'Eau Bleu) to capture as much of the surplus flow (max. 2000 to 4000 cfs) that would otherwise leave the Terrebonne Basin. Gated control structures would be installed to restrict channel cross-sections to prevent increased saltwater intrusion during the late summer and fall when Atchafalaya River influence is typically low. Some auxiliary freshwater distribution structures may be included. This project also includes increasing freshwater supply through repairing banks along the GIWW, enlarging constrictions in the GIWW, and diverting additional Atchafalaya River freshwater through the Avoca Island Levee and into Bayou Chene/GIWW system.

3. *Public Involvement.* Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping.* Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in January 2009.

5. *Coordination.* The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS.* The earliest that the draft SEIS will be available for public review would be in spring of 2010. The draft SEIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

December 11, 2008.

Mark D. Jernigan,

Lieutenant Colonel, U.S. Army Deputy District Commander.

[FR Doc. E8–30358 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Medium Diversion at White's Ditch Feasibility Study

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Medium Diversion at White's Ditch restoration project. This restoration project will provide additional freshwater, nutrients, and fine sediment to the area between the Mississippi River and River aux Chenes ridges. This area is currently isolated from the beneficial effects of the Caernarvon freshwater diversion. The introduction of additional freshwater would facilitate organic sediment deposition, improve biological productivity, and prevent

further deterioration of the marshes. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Nathan S. Dayan, CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2530; fax: (504) 862–1583; or by e-mail: *Nathan.S.Dayan@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Authority*. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, section 7006(e)(3) instructs the Secretary of the Army to submit feasibility reports to Congress on six elements of the LCA near-term restoration plan by December 31, 2008. The six elements are: (1) Multipurpose Operation of Houma Navigation Lock, (2) Terrebonne Basin Barrier Shoreline Restoration, (3) Small Diversion at Convent/Blind River, (4) Amite River Diversion Canal Modification, (5) Medium Diversion at Whites Ditch, and (6) Convey Atchafalaya River Water to Northern Terrebonne Marshes. The Congressional language further authorizes construction of these six elements contingent upon completion of a favorable report of the Chief of Engineers, no later than December 31, 2010, and subsequent submission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action*. The Medium Diversion at White's Ditch restoration project proposes the construction of a diversion structure which would provide for a medium diversion (5,000–15,000 cfs) from the Mississippi River into the central River aux Chenes area using a controlled structure. The objective of the project is to provide additional freshwater, nutrients, and fine sediment to the area between the Mississippi River and River aux Chenes ridges. This area is currently isolated from the beneficial effects of the Caernarvon freshwater diversion. The introduction of additional freshwater would facilitate organic sediment deposition, improve biological productivity, and prevent further deterioration of the marshes.

3. *Public Involvement*. Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping*. Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in January 2009.

5. *Coordination*. The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS*. The earliest that the draft SEIS will be available for public review would be in spring of 2010. The draft SEIS or a notice of availability will be distributed to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: December 11, 2008.

Mark D. Jernigan,

Lieutenant Colonel, U.S. Army, Deputy District Commander.

[FR Doc. E8–30360 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Louisiana Coastal Area (LCA)—Louisiana, Terrebonne Basin Barrier Shoreline Restoration Project

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) intends to prepare a supplemental environmental impact statement (SEIS) for the Louisiana Coastal Area (LCA)—Louisiana, Terrebonne Basin Barrier Shoreline Restoration Project. This restoration project will restore major reaches of the Terrebonne barrier islands chain. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning the draft SEIS should be addressed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, LA 70160–0267; telephone: (504) 862–2540; fax: (504) 862–1583; or by e-mail: *william.p.klein.jr@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Authority*. This SEIS will be tiered off of the programmatic EIS for the Louisiana Coastal Area (LCA)—Louisiana, Ecosystem Restoration Study, November 2004. The record of decision for the programmatic EIS was signed on November 18, 2005. The Water Resources Development Act of 2007 (WRDA 2007) authorized the LCA program. The authority includes requirements for comprehensive planning, program governance, implementation, and other program components. The LCA restoration program will facilitate the implementation of critical restoration features and essential science and technology demonstration projects, increase the beneficial use of dredged material and determine the need for modification of selected existing projects to support coastal restoration objectives. The LCA near-term plan includes fifteen elements authorized for implementation contingent upon meeting certain reporting requirements. Specifically, Section 7006(e)(3) instructs the Secretary of the Army to submit feasibility reports to Congress on six elements of the LCA near-term restoration plan by December 31, 2008. The six elements are: (1) Multipurpose Operation of Houma Navigation Lock, (2) Terrebonne Basin Barrier Shoreline Restoration, (3) Small Diversion at Convent/Blind River, (4) Amite River Diversion Canal Modification, (5) Medium Diversion at Whites Ditch, and (6) Convey Atchafalaya River Water to Northern Terrebonne Marshes. The Congressional language further authorizes construction of these six elements contingent upon completion of a favorable report of the Chief of Engineers, no later than December 31, 2010, and subsequent submission to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

2. *Proposed Action*. The Terrebonne Basin Barrier Shoreline Restoration Project would restore major reaches of the Terrebonne barrier island chain, including the Isles Dernieres (East Island, Trinity Island, and Whiskey Island) Timbalier Island, and East Timbalier Island. The objective of this restoration project is to reduce the number of breaches and enlarge the width and dune crest of the barrier islands. Specifically, this project has the potential to prevent further barrier island losses; restore endangered, critical geomorphic structure, and protect vital socioeconomic resources such as oil and gas infrastructure and fisheries.

3. *Public Involvement*. Public involvement, an essential part of the SEIS process, is integral to assessing the environmental consequences of the proposed action and improving the quality of the environmental decision making. The public includes affected and interested Federal, state, and local agencies, Indian tribes, concerned citizens, stakeholders, and other interested parties. Public participation in the SEIS process will be strongly encouraged, both formally and informally, to enhance the probability of a more technically accurate, economically feasible, and socially and politically acceptable SEIS. Public involvement will include but is not limited to: Information dissemination; identification of problems, needs and opportunities; idea generation; public education; problem solving; providing feedback on proposals; evaluation of alternatives; conflict resolution by consensus; public and scoping notices and meetings; public, stakeholder and advisory groups consultation and meetings; and making the SEIS and supporting information readily available in conveniently located places, such as libraries and on the World Wide Web.

4. *Scoping*. Scoping, an early and open process for identifying the scope of significant issues related to the proposed action to be addressed in the SEIS, will be used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient SEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the SEIS; and (d) save time in the overall process by helping to ensure that the draft SEIS adequately addresses relevant issues. A Scoping Meeting Notice announcing the locations, dates and times for scoping meetings will be mailed to all interested parties in January 2009.

5. *Coordination*. The USACE and the U.S. Fish and Wildlife Service (USFWS) have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003 Partnership Agreement for Water Resources and Fish and Wildlife. The USFWS will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service (NMFS) regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the NMFS regarding essential fish habitat. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the U.S. Environmental Protection Agency concerning compliance with Executive Order 12898, ''Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be consulted concerning potential impacts to Natural and Scenic Streams.

5. *Availability of Draft SEIS*. The earliest that the draft SEIS will be available for public review would be in spring of 2010. The draft SEIS or a notice of availability will be distributed

to affected Federal, state, and local agencies, Indian tribes, and other interested parties.

Dated: December 11, 2008.

Mark D. Jernigan,

Lieutenant Colonel, U.S. Army, Deputy District Commander.

[FR Doc. E8–30366 Filed 12–19–08; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: European Union-United States Atlantis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

Dates:

Applications Available: December 22, 2008.

Deadline for Transmittal of Applications: March 23, 2009.

Deadline for Intergovernmental Review: May 25, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to provide grants to or enter into cooperative agreements with eligible applicants to improve postsecondary education.

Priority: Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

This priority is designed to support the formation of educational consortia of American and European institutions to support cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States (U.S.) and the European Union (EU). This priority relates to the purpose of the European Union-United States Atlantis (Atlantis) Program to develop and implement undergraduate joint or dual degree programs, or short-term exchange programs.

This invitational priority is established in cooperation with the EU. These awards support only the participation of U.S. institutions and students in the educational consortia established under this priority. EU institutions participating in any consortium proposal responding to the invitational priority may apply to the Directorate-General for Education and Culture (DG EAC), European Commission, for funding under a separate but parallel EU competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $37,433,000 for the FIPSE programs, of which we intend to allocate $4,486,000 for new awards for the European Union-United States Atlantis program in FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $35,000–$116,000 for the first year only.

Estimated Average Size of Awards: $35,000 for a Policy Oriented Measures grant, $45,000 for a Mobility grant, and $116,000 for a Transatlantic Degree grant. These figures are for the first year of funding in a multi-year grant. You can find a detailed description of each of these three types of grants in the program guidelines in the application package for this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 45.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.Grants.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116J.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Word Limit and Application Format: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 6000 words. The page format for the application must comply with the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier

New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 6000-word limit applies only to the application narrative (Part III). It does not apply to Part I, the Application for Federal Assistance sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget summary form (ED Form 524); and Part IV, the assurances, certifications, and survey forms. In addition, the 6000-word limit does not apply to the one-page abstract, appendices, the short bios, letters of commitment, line item budget, or a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for the purpose of the word limit. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the 6000-word limit.

3. *Submission Dates and Times:*

Applications Available: December 22, 2008.

Deadline for Transmittal of Applications: March 5, 2009.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review:* May 4, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the EU–U.S. Atlantis Program, CFDA Number 84.116J, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the EU–U.S. Atlantis Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116J).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC, time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC, time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC, time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any word-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116J) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116J) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education

Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two measures will be used by the Department in assessing the performance of the FIPSE program as a whole:

(1) The percentage of FIPSE grantees who report project dissemination to others; and

(2) The percentage of FIPSE projects that report institutionalization on their home campuses.

In addition, the program has developed two performance measures specifically for the FIPSE European Union-United States Atlantis Program:

(1) The percentage of students pursuing a joint or dual degree who persist from one academic year to the next (persistence); and

(2) The percentage of students who graduate within the project's stated time for completing a joint or dual degree (graduation).

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on the program's four measures. Consequently, applicants are advised to include these four measures in conceptualizing the design, implementation, and evaluation of their proposed projects. Consideration of the performance measures is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these measures. These measures should be a part of the project evaluation plan, along with any measures of your progress on the goals and objectives that are specific to your project.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, European Union-United States Atlantis Program, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. Telephone: (202) 502–7513 or by e-mail: *frank.frankfort@ed.gov.* The contact person does not mail application materials and does not accept applications.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 17, 2008.

Vickie L. Schray,

Acting Deputy, Secretary Higher Education Programs.

[FR Doc. E8–30404 Filed 12–19–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Partnerships in Character Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number 84.215S.

DATES: Applications Available: December 22, 2008.

Deadline for Transmittal of Applications: February 24, 2009.

Deadline for Intergovernmental Review: April 27, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under this program we support Federal grants to design and implement character education programs that can be integrated into classroom instruction and that are consistent with State academic content standards. Such programs may be carried out in conjunction with other educational reform efforts, and must take into consideration the views of the parents of the students to be taught under the program and the views of the students. Each application must describe how parents, students, students with disabilities (including those with mental or physical disabilities), and other members of the community, including members of private and nonprofit organizations and faith-based and community organizations, will be involved in the design and implementation of the program and how the eligible entity will work with the larger community to increase the reach and promise of the program.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from title V, part D, subpart 3, section 5431 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7247), as amended by the No Child Left Behind Act of 2001 (NCLB).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34

CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

The design and implementation of character education programs that are able to be—

(a) Integrated into classroom instruction and consistent with State academic content standards; and

(b) Carried out in conjunction with other educational reform efforts.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority.

This priority is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on January 25, 2005 (70 FR 3585).

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets this priority. Applicants proposing a quasi-experimental design may receive up to 10 additional points to their final score. Applicants proposing an experimental design may receive up to 20 additional points to their final score. When using the priority to give competitive preference to an application, the Secretary will review applications using a two-stage process. In the first stage, the application will be reviewed without taking the priority into account. In the second stage of review, the applications rated highest in stage one will be reviewed for competitive preference.

This priority is:

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance. Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—e.g., students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participant—e.g., students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed. For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Definitions

As used in this notice—

Scientifically based research (section 9101(37) NCLB):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on

key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design.

In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score (''cut score'') are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the ''cut score'' is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

Note: Due to the very short timeframe that applicants have to select a proposed evaluator for the competitive preference priority, we remind applicants that they can, under 34 CFR 80.36, use informal procedures to select a proposed contractor for this purpose. For example, section 80.36 authorizes simple informal procedures to select contractors for contracts under the simplified acquisition threshold of $100,000. 34 CFR 80.36(d)(1). The regulations only require that you request offers from an adequate number of sources. In addition, even if you expect that the evaluation of your project would cost more than $100,000, the regulations recognize special cases where a contractor must be selected within a very limited time period. Again, you need to request proposals from an adequate number of qualified sources and select the contractor whose proposal is most advantageous to the program, considering price and other selection factors. In these situations, if informal solicitation does not result in an adequate number of proposals, you may select a single bidder so long as you document the facts that formed the basis for your decision. 34 CFR 80.36(d)(1), (3), (4).

Invitational Priority: Within the absolute priority, we are particularly interested in applications that address the following invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Faith-based and community organizations.

The Secretary is especially interested in applications that propose to engage faith-based and community organizations in the planning and development of character education programs and the delivery of services under this program.

Program Authority: 20 U.S.C. 7247.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR 299. (c) The notice of final priority published in the **Federal Register** on January 25, 2005 (70 FR 3585). (d) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: The Administration's budget request for FY 2009 does not include funds for this program. However, the Administration requested $23,824,000 for character education activities, of which an estimated $1,277,480 would be made available for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: For State educational agencies (SEAs), $500,000–$750,000. For local educational agencies (LEAs), $250,000–$500,000. We anticipate that applicants who request funding at the higher end of these ranges would respond to the competitive preference priority to implement experimental or quasi-experimental designs.

Estimated Average Size of Awards: For SEAs, $600,000 for each 12-month budget period. For LEAs, $350,000 for each 12-month budget period.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months, of which no more than 12 months may be used for planning and program design.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An SEA in partnership with—

(1) One or more LEAs; or

(2) One or more—

(i) LEAs; and

(ii) Nonprofit organizations or entities, including faith-based and community organizations, and an institution of higher education (IHE);

(b) An LEA or consortium of LEAs; or

(c) An LEA in partnership with one or more nonprofit organizations or entities, including faith-based and community organizations, and an IHE.

Charter schools that are considered LEAs under State law are also eligible to apply.

The Secretary limits eligibility under this discretionary grant competition to applicants that do not currently have an active grant under the Partnerships in Character Education Program. For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Participation by Private School Children and Teachers. Each eligible entity that receives a grant under this program shall provide, to the extent feasible and appropriate, for the participation in programs and activities of students and teachers in private elementary and secondary schools.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Sharon J. Burton, U.S. Department of Education, 400 Maryland Avenue, SW., room 10102, Potomac Center Plaza (PCP), Washington, DC 20202. Telephone: (202) 245–7867 or by e-mail: *sharon.burton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:* Applications Available: December 22, 2008. Deadline for Transmittal of Applications: February 24, 2009.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review: April 27, 2009.*

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Under section 5431(d)(1) of the ESEA (20 U.S.C. 7247(d)(1)), an SEA may not use more than three percent (3%) of the total funds received in any fiscal year for administrative purposes. This does not apply to LEAs. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Partnerships in Character Education Program, CFDA number 84.215S, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Partnerships in Character Education Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215S).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215S) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215S) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 in EDGAR and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are included in 20 U.S.C. 7247. We will ensure that, to the extent practicable, the projects for which we provide funding are equally distributed among the geographic regions of the United States, and among urban, suburban and rural areas.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the

most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), two performance indicators have been established for the Partnerships in Character Education Program. The indicators are (1) the percentage of Partnerships in Character Education Program grantees that use an experimental or quasi-experimental design for their evaluation and (2) the percentage of Partnerships in Character Education Program grantees that use an experimental or quasi-experimental design for their evaluation that are conducted successfully and that yield scientifically valid results. Consequently, applicants for a grant under this program are advised to give careful consideration to these two measures in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to report data in their annual performance reports on evaluation outcomes. The Secretary will use this information to assess the overall quality of performance data obtained through rigorous evaluations conducted by grantees, and to respond to reporting requirements concerning this program established in section 5431(h) of the ESEA (20 U.S.C. 7247(h)).

VII. Agency Contact

For Further Information Contact: Sharon J. Burton, U.S. Department of Education, 400 Maryland Avenue, SW., room 10102, PCP, Washington, DC 20202. Telephone: (202) 245–7867 or by e-mail: *sharon.burton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. *Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 16, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8–30388 Filed 12–19–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings, #1

December 12, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2398–016.
Applicants: Liberty Electric Power, LLC.
Description: Liberty Electric Power, LLC submits an updated market power analysis Triennial Report pursuant to the FERC Order 697.
Filed Date: 12/09/2008.
Accession Number: 20081211–0240.
Comment Date: 5 p.m. Eastern Time on Monday, February 9, 2009.

Docket Numbers: ER06–1355–003.
Applicants: Evergreen Wind Power, LLC.
Description: Evergreen Wind Power, LLC submits the clean and redlined versions of the revised market-based rate tariff etc.
Filed Date: 12/08/2008.
Accession Number: 20081211–0174.
Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER08–1214–002; ER08–1215–002; ER08–1216–002; ER08–1217–002; ER08–1218–002.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits its compliance filing pursuant to the Commission's 11/10/08 Order.
Filed Date: 12/10/2008.
Accession Number: 20081211–0241.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–392–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp submits the Interconnection Facility and Interconnection Facility Premises Lease with New Athens Generating Co, LLC.
Filed Date: 12/08/2008.
Accession Number: 20081210–0075.
Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER09–393–000.
Applicants: West Oaks Energy, LLC.
Description: West Oaks Energy, LLC submits an application for market-based rate authority etc.
Filed Date: 12/10/2008.
Accession Number: 20081212–0110.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: ER09–394–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff to Incorporate Project Sponsor Upgrade Agreement, to be effective 2/7/09.
Filed Date: 12/09/2008.
Accession Number: 20081211–0250.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–395–000.
Applicants: Mid-Continental Area Power Pool.
Description: Mid-Continent Area Power Pool submits revisions to the contingency reserve sharing provisions of the MAPP Restated Agreement.
Filed Date: 12/09/2008.
Accession Number: 20081211–0249.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–396–000.
Applicants: Dynegy Power Marketing Inc.
Description: Dynegy Power Marketing, Inc requests that the FERC grant a waiver of Section 3(b) of its market-base rate tariff in order to continue selling regulation service to Central Illinois Light Co et al.
Filed Date: 12/09/2008.
Accession Number: 20081211–0246.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–397–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits Supplement No 5 to Rate Schedule FERC No. 72, effective 12/10/08.
Filed Date: 12/09/2008.
Accession Number: 20081211–0248.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–398–000.

Applicants: Ameren Energy Marketing Company.

Description: Ameren Energy Generating Company et al submits Rate Schedule FERC 6 and Rate Schedule FERC 4 with supporting cost data, pursuant to Section 205 of the Federal Power Act.

Filed Date: 12/09/2008.

Accession Number: 20081211–0247.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 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. E8–30259 Filed 12–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 11, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3426–009.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co. submits a clean and black-lined tariff sheet to reflect the affiliate transaction authorization granted in the FERC's 11/6/08 letter order.

Filed Date: 12/08/2008.

Accession Number: 20081210–0062.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER00–2738–008; ER00–2740–008; ER01–1721–006; ER02–564–006; ER06–653–003; ER99–1004–009.

Applicants: Nuclear Fitzpatrick, LLC; Entergy Nuclear Generation Company; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Entergy Nuclear Vermont Yankee, LLC; Entergy Nuclear Power Marketing, LLC.

Description: Entergy Nuclear Affiliates submits an amendment to the June 30, 2008 filing.

Filed Date: 08/19/2008.

Accession Number: 20080820–0054.

Comment Date: 5 p.m. Eastern Time on Monday, December 15, 2008.

Docket Numbers: ER04–691–091.

Applicants: Midwest Independent System Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to the Open Access Transmission and Markets Tariff (EMT), etc.

Filed Date: 12/08/2008.

Accession Number: 20081210–0065.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER04–230–041; ER01–3155–026; ER01–1385–035; EL01–45–034.

Applicants: New York Independent System Operator, Inc.; Consolidated Edison Company of New York.

Description: Sixteenth Quarterly Report regarding NYISO efforts to accommodate batch loads and flywheel energy storage technologies in its ancillary services markets as well as improved utilization of combined cycle units.

Filed Date: 12/08/2008.

Accession Number: 20081208–5173.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER07–265–007.

Applicants: Sempra Energy Solutions LLC.

Description: Sempra Energy Solutions LLC submits revisions to its Fourth Revised Rate Schedule FERC 1 to reflect certain authorizations granted by the Commission on 11/6/08.

Filed Date: 12/08/2008.

Accession Number: 20081210–0063.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER09–84–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits amendments to its 10/16/08 filing.

Filed Date: 12/01/2008.

Accession Number: 20081205–0033.

Comment Date: 5 p.m. Eastern Time on Monday, December 22, 2008.

Docket Numbers: ER09–382–000.

Applicants: Hay Canyon Wind LLC.

Description: Hay Canyon Wind LLC submits an application requesting that FERC accept for filing its FERC Electric Tariff, Original Volume 1, etc.

Filed Date: 12/08/2008.

Accession Number: 20081210–0070.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER09–385–000.

Applicants: Midwest Independent System Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff, etc.

Filed Date: 12/09/2008.

Accession Number: 20081210–0069.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–386–000.

Applicants: Reliant Energy Wholesale Generation, LLC.

Description: Reliant Energy Wholesale Generation, LLC submits Notice of Cancellation of Seward's market-based rate tariff.

Filed Date: 12/09/2008.

Accession Number: 20081210–0068.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–387–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation *et al.* submit proposed modifications to the Contract for Interchange Service with Tampa Electric Company designated as First Revised Rate Schedule 80.

Filed Date: 12/09/2008.

Accession Number: 20081210–0067.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–388–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits First Revised Sheet 12 *et al.* to its First Revised Rate Schedule FERC 6, effective 11/8/08.

Filed Date: 12/08/2008.

Accession Number: 20081210–0071.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER09–389–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits the Lease Agreements with the Village of Bergen dated 7/31/03.

Filed Date: 12/08/2008.

Accession Number: 20081210–0064.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER09–390–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff pursuant to Section 205 of the Federal Power Act, effective 12/12/08.

Filed Date: 12/09/2008.

Accession Number: 20081210–0066.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: ER09–391–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits First Revised Rate Schedule FERC No. 185, a General Transmission Agreement for Integration of Resources with the Bonneville Power Administration.

Filed Date: 12/09/2008.

Accession Number: 20081210–0072.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–141–001.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc.'s Errata to Order No. 890–B Compliance Filing.

Filed Date: 12/10/2008.

Accession Number: 20081210–5131.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30260 Filed 12–19–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0855; FRL–8394–3]

Registration Review; Citric Acid, and Salts Docket Opened for Review and Comment

Correction

In notice document E8–29974 beginning on page 76648 in the issue of Wednesday, December 17, 2008, make the following correction:

On page 76650, in the first column, the signature block should appear as follows:

Dated: December 7, 2008.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. Z8–29974 Filed 12–19–08; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

December 16, 2008.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, Performance and Evaluation Records Management Division, Office of the Managing Director, at (202) 418–2918 or at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0896.

OMB Approval Date: November 28, 2008.

Expiration Date: November 30, 2011.

Title: Broadcast Auction Form Exhibits.

Form Number: Not applicable.

Estimated Annual Burden: 7,605 responses; 0.5–2 hours per response; 8,628 burden hours per year.

Annual Cost Burden: $10,163,100.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i) and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On December 18, 2007, the Commission adopted a Report and Order and Third Further Notice of Proposed Rulemaking (''the Diversity Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, which expands opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority and women-owned businesses.

Currently, the media interests held by an individual or company with an equity and/or debt interest in an auction applicant are attributed to that applicant, for purposes of determining its eligibility for the new entrant bidding credit, if the equity and debt interests exceed 33 percent of the total asset value of the applicant. In order to make it easier for small businesses and new entrants to acquire broadcast licenses, and acquire the capital to compete in the marketplace with better financed companies, in the Diversity Order the Commission relaxed the rule standard, so to allow for higher investment opportunities in entities meeting the definition of ''eligible entities.'' An ''eligible entity'' is defined as an entity that would qualify as a small business consistent with the Small Business Administration (''SBA'') standards for its industry grouping, based on revenue.

Pursuant to the Diversity Order, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided: (1) The combined equity or debt in the ''eligible entity'' is less than 50 percent, or (2) the total debt in the ''eligible entity'' does not exceed 80 percent and the interest holder does not hold any option to acquire an additional interest in the ''eligible entity.''

Consistent with actions taken by the Commission in the Diversity Order, a new question has been added to the new entrant bidding credit section of the broadcast auction application form. It simply requires applicants to make explicit any claim that they are ''eligible entities,'' as a basis for claiming a bidding credit. The question states: ''Does the applicant claim to be an 'eligible entity' as defined in 47 CFR 73.5008(c), for purposes of claiming eligibility for the new entrant bidding credit?'' Additional information showing proof of compliance is not required at the pre-auction application stage. The Commission also foresees a new universe of respondents to the collection—those broadcast auction applicants claiming eligibility for the new entrant bidding credit based on their status as an ''eligible entity.''

The Commission auctions mutually exclusive applications for full power commercial AM and FM radio, television services, Instructional Television Fixed Services (ITFS), and all secondary commercial broadcast services (e.g., Low Power TV (LPTV), FM translators and television translators). The Commission requires the use of the FCC Form 175 (OMB Control Number 3060–0600) to participate in all broadcast auctions. Broadcast applicants are also required to submit certain exhibits, which are covered in this information collection as discussed below.

To facilitate the identification of groups of mutually exclusive applicants for non-table services which include the AM radio, LPTV, and TV/FM translator services, the Commission requires applicants to submit the engineering portions of the pertinent long-form application (FCC Form 301 (OMB Control Number 3060–0027), FCC Form 346 (OMB Control Number 3060–0016), or FCC Form 349 (OMB Control Number 3060–0405) necessary to determine mutual exclusivity.

In instances where analog television licensees file major modification applications, the Commission requires that such applicants also file the engineering data. These applicants are required to file the electronic versions of FCC Forms 301, 346 or 349.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30363 Filed 12–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 16, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments February 20, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0783.

Title: Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz or at 764–776/794–806 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15 respondents; 3,900 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement and third party coordination requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in sections 47 U.S.C. 1, 154(i), 301, 302, 303(f), 303(r), 309(j) and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,950 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in the reporting requirements and/or third party disclosure requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and if requested, an engineering analysis.

Any method can be used to ensure this compliance with the ''one business day requirement'' and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; and effective radiated power; the type(s) of emissions; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the effected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

This requirement seeks to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30367 Filed 12–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 12, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 20, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), 202–395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0400.

Title: Tariff Review Plan.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 47 respondents; 47 responses.

Estimated Time Per Response: 61 hours.

Frequency of Response: Annual and biennial reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in section 47 U.S.C. 10(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 2,867 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension (no change in the reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The total annual burden hours has increased by 427 hours which is due to an increase in the number of price cap

carriers (number of respondents from 40 to 47) from the last time this information collection was submitted to the OMB for review and approval in 2006.

Certain local exchange carriers are required to submit a biennial or annual Tariff Review Plan in partial fulfillment of cost support material required by 47 CFR Part 61. Sections 201, 202, and 203 of the Communications Act of 1934, as amended require common carriers to establish just and reasonable charges, practices and regulations for their interstate telecommunications services provided. For services that are still covered under Section 203, tariff schedules containing charges, rates, rules, and regulations must be filed with the Commission. If the FCC takes no action within the notice period, then the filing becomes effective. The Commission is granted broad authority to require the submission of data showing the value of the property used to provide the services, some of which are automatically required by its rules and some of which can be required through individual requests. All filings that become effective are considered legal but only those filed pursuant to Section 204(a)(3) of the Act are deemed lawful.

For services that are detariffed, no tariffs are filed at the FCC and determination of reasonableness and any unreasonable discrimination is generally addressed through the complaint process.

Incumbent local exchange carriers (ILECs) can make a voluntary tariff filing at anytime, but are required to update rates annually or biennially. See 47 CFR Section 69.3. To minimize the regulatory burdens on reporting ILECs, as well as reviewers, the Commission has undertaken many reforms as described in the following: (1) The Commission has developed a standardized Tariff Review Plans (TRPs) which set forth the summary material ILECs file to support revisions to the rates in their interstate access service tariffs. (2) Incentive-based regulation (price caps) was developed by the Commission to simplify the process of determining the reasonableness of rates or rate restructures for ILECs subject to price caps. Supporting material requirements for price cap ILECs qualifying for pricing flexibility have been eliminated. In addition, ILECs having 50,000 or fewer access lines do not have to file any supporting material unless requested to do so. (3) Price cap ILECs can elect to be subject to Title I versus Title II of the Act for certain forms of internet access in order t offer their internet access services on a detariffed basis pursuant to private contracts. Rate-of-return ILECs can choose to change from tariffed to detariffed for the same internet services, but are still subject to Title II regulation. (4) Through forbearance, the Commission has allowed those ILECs whose petition has been granted to choose mandatory detariffing of certain broadband and packet services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–30413 Filed 12–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 08–2689]

First Meeting of the Advisory Committee for the 2011 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the initial meeting of the WRC–11 Advisory Committee will be held on January 13, 2009, at the Federal Communications Commission. The purpose of the meeting is to begin preparations for the 2011 World Radiocommunication Conference.

DATES: January 13, 2009; 11 a.m. to 12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–11 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: As it initiates preparations for the next World Radiocommunication Conference that has been preliminarily scheduled for the year 2011 (WRC–11), the Federal Communications Commission (FCC) has amended the charter of its Advisory Committee for the 2007 Radiocommunication Conference. The Advisory Committee has been renamed the Advisory Committee for the 2011 Radiocommunication Conference (or simply, WRC–11 Advisory Committee), and its scope of activities have been amended to address issues contained in the agenda for WRC–11. The Federal Communications Commission (FCC) established the WRC–11 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2011 World Radiocommunication Conference (WRC–11).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the first meeting of the WRC–11 Advisory Committee. The WRC–11 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the first meeting is as follows:

Agenda

First Meeting of the WRC–11 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554, January 13, 2009; 11 am. to 12 noon.

1. Opening Remarks.
2. Approval of Agenda.
3. Advisory Committee Structure.
4. Report on Recent WRC–11 Preparatory Meetings.
5. WRC–11 Preparatory Process Timeline.
6. Other Business.

Federal Communications Commission.

Helen Domenici,

Chief, International Bureau.

[FR Doc. E8–30446 Filed 12–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 73 FR 75435.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m. on December 17, 2008.

CHANGE: 1. The withdrawal of Item 2 to the Closed Session of the Meeting.

Item 2—Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders—Possible Update.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30435 Filed 12–18–08; 11:15 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Southern Bancshares, Inc., Mount Olive, North Carolina, to acquire up to 9.9 percent of the voting shares of ECB Bancorp, Inc., and thereby indirectly acquire up to 9.9 percent of the voting shares of East Carolina Bank, both of Englehard, North Carolina.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Raymond James Financial, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Raymond James Bank, FSB, both of St. Petersburg, Florida, to be named Raymond James Bank, N.A., upon its conversion to a national bank.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Castle Creek Capital Partners III LP, Castle Creek Capital III LLC, Eggemeyer Capital LLC, Ruh Capital LLC, and Legions IV Advisory Corp., all of Rancho Santa Fe, California, to acquire up to 19.9 percent of the voting shares of Guaranty Bancorp, and thereby indirectly acquire voting shares of Guaranty Bank and Trust Company, both of Denver, Colorado.

Board of Governors of the Federal Reserve System, December 16, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–30244 Filed 12–19–08; 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 January 5, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Synovus Financial Corporation, to establish Broadway Asset Management, Inc., both of Columbus, Georgia, and thereby engage *de novo* in extending credit and servicing loans, activities related to extending credit, and leasing personal and real property, pursuant to sections 225.28(b)(1) and (b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–30245 Filed 12–19–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]

General Services Administration Acquisition Regulation; Information Collection; Final Payment Under Building Services Contract

AGENCY: Office of the Chief Acquisition Officer (GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding final payment under building services contract. A request for public comments was published at 73 FR 32333, June 6, 2008. No comments were received. This OMB clearance expires on December 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Procurement Analyst, Contract Policy Division, at telephone (202) 208–6925 or via e-mail to *meredith.murphy@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

burden to Ms. Jasmeet Seehra, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat, (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0080, Final Payment Under Building Services Contract, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.232–72 requires building services contractors to submit a release of claims before final payment is made.

B. Annual Reporting Burden

Respondents: 2000.
Responses per Respondent: 1.
Hours per Response: .1.
Total Burden Hours: 200.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0080, Final Payment Under Building Services Contract, in all correspondence.

Dated: December 16, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–30289 Filed 12–19–08; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2009–B1]

Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: This bulletin cancels and replaces GSA Bulletin FPMR D–245, Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace, which was published in the **Federal Register** on October 20, 1997 (62 FR 54461). This bulletin announces and provides details of a recent amendment to Federal Management Regulation, Part 102–74, Facility Management, revising the restrictions on the smoking of tobacco products in leased or owned space under the jurisdiction, custody or control of the Administrator of General Services. The revisions to the smoking policy also serve as a best practices model for other federal agencies.

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

FOR FURTHER INFORMATION CONTACT: For further clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; or *stanley.langfeld@gsa.gov.*

Dated: December 11, 2008.

Gary Klein,

Associate Administrator, Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

[GSA FMR Bulletin 2009–B1]

Public Buildings and Space

TO: Heads of Executive Agencies.

SUBJECT: Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace.

1. Purpose. This bulletin announces the policy concerning the protection of federal employees and the public from exposure to tobacco smoke in the federal workplace.

2. Expiration Date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background.

a. On August 9, 1997, President Clinton signed Executive Order (EO) 13058, entitled ''Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace,'' to establish a smoke-free environment for federal employees and members of the public visiting or using federal facilities (62 FR 43451, August 13, 1997).

b. On October 20, 1997, the U.S. General Services Administration (GSA) issued GSA Bulletin FPMR D–245, ''Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace'' (62 FR 54461). In accordance with the requirements of EO 13058, GSA Bulletin FPMR D–245 prohibited the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government, except in specially-equipped designated smoking areas, outdoor areas in front of air intake ducts and certain other residential and non-federal occupied space. The bulletin also required the heads of executive agencies to evaluate the need to restrict smoking in courtyards and near doorways.

c. Studies conducted since the issuance of GSA Bulletin FPMR D–245 have concluded that cigarette smoking is the number one preventable cause of morbidity and premature mortality worldwide. Studies also have shown that the harmful effects of smoking are not confined solely to the smoker, but extend to co-workers and members of the general public who are exposed to secondhand smoke as well. Recognition of these facts is evidenced by the stricter laws on smoking enacted by several states over the past ten years. Twenty-six states have banned smoking entirely in all of their state government buildings and 19 have banned smoking in all private work places.

d. EO 13058 encourages the heads of executive agencies to evaluate the need to further restrict smoking at doorways and in courtyards under executive branch control and authorizes the agency heads to restrict smoking in these areas in light of this evaluation.

e. The policy requirements announced by this bulletin are applicable to leased or owned space under the jurisdiction, custody or control of GSA. In addition, federally leased space located in a privately owned building is subject to state and local government smoking restrictions, if the restrictions are more stringent than the federal policy.

f. The revisions to the previous smoking policy may affect conditions of employment for employees. Where there is an exclusive representative for the employees, executive branch agencies will be required to meet their collective bargaining obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, before the revisions to the previous smoking policy can be implemented.

4. Action.

a. As ordered by EO 13058, it is the policy of the executive branch to establish a smoke-free environment for federal employees and members of the public visiting or using federal facilities. In furtherance of this policy, executive agencies must prohibit the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts. In addition, effective [insert date 6 months after publication of FMR amendment on smoking, FMR Case 2008–102–3], smoking is prohibited in courtyards and within 25 feet of doorways and air intake ducts on outdoor space under the jurisdiction, custody or control of GSA. This date provides a six-month phase-in period

and is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

b. The only exceptions to the general policy against smoking as described in EO 13058 and this bulletin are:

(1) Residential accommodations for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(2) Portions of federally owned buildings leased, rented or otherwise provided in their entirety to non-federal parties; and

(3) Places of employment in the private sector or in other non-Federal Governmental units that serve as the permanent or intermittent duty station of one or more federal employees.

c. The exception in the Federal Management Regulation (FMR) for designated smoking areas, 41 CFR 102–74.320(a), is being eliminated. Accordingly, all designated interior smoking areas will be closed [insert date 6 months after publication of FMR amendment on smoking, FMR Case 2008–102–3]. This date provides a six-month phase-in period and is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

d. Executive agency heads may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head and, to the fullest extent possible, provide protection of non-smokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

e. The heads of executive agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking. Cessation program materials for agencies interested in establishing a smoking cessation program for their employees are available from the Department of Health and Human Services, Centers for Disease Control and Prevention, Web site at *http://www.cdc.gov/tobacco/quit_smoking/index.htm.* This Web site also identifies several How to Quit resources for individuals interested in smoking cessation.

f. The heads of executive agencies are responsible for ensuring compliance with the requirements of this bulletin.

[FR Doc. E8–30377 Filed 12–19–08; 8:45 am]

BILLING CODE 6820–RH–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0260]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 30 days.

Proposed Project: Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation—OMB No. 0990–0260—Office for Human Research Protections.

Abstract: Section 491(a) of Public Law 99–158 states that the Secretary of HHS shall by regulation require that each entity applying for HHS support (e.g., a grant, contract, or cooperative agreement) to conduct research involving human subjects submit to HHS assurances satisfactory to the Secretary that it has established an institutional review board (IRB) to review the research in order to ensure protection of the rights and welfare of the human research subjects. IRBs are boards, committees, or groups formally designated by an entity to review, approve, and have continuing oversight of research involving human subjects.

Pursuant to the requirement of the Public Law 99–158, HHS promulgated regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects. The June 18, 1991 adoption of the common Federal Policy (56 FR 28003) by 15 departments and agencies implements a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1974, by Pub. L. 95–622. The Common Rule is based on HHS regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects.

The respondents for this collection are institutions engaged in such research. Institutional adherence to the Common Rules also is required by other federal departments and agencies that have codified or follow the Common Rule which is identical to 45 CFR part 46, subpart A. The information being requested related to the Common Rule should be readily available to the institution or organization that registers the IRB.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Title	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
.103(b)(4), .109(d) IRB Actions, .116 and .117 Informed Consent	6,000	39.33	1	235,980

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Title	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
.115(a) IRB Recordkeeping	6,000	15	10	900,000
.103(b)(5) Incident Reporting, .113 Suspension or Termination Reporting	6,000	0.5	45/60	2,250
Total				1,138,230

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–30274 Filed 12–19–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Declaration Under the Public Readiness and Emergency Preparedness Act

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide targeted liability protections for pandemic influenza diagnostics, personal respiratory protection devices, and respiratory support devices based on a credible risk that an avian influenza virus spreads and evolves into a strain capable of causing a pandemic of human influenza.

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).

SUPPLEMENTARY INFORMATION: Highly pathogenic avian influenza A H5N1 viruses have been spread by infected migratory birds and exports of poultry or poultry products from Asia through Europe and Africa since 2003, and could spread into North America in 2008 or later, and have caused disease in humans, with over 60% of infected people dying from H5N1. In addition to H5N1, other animal influenza A viruses have also caused disease in humans, including H2N2, H7N7, H7N2, and H9N2 influenza A viruses, and also pose a pandemic threat. Section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d), which was enacted by the Public Readiness and Emergency Preparedness Act, is intended to alleviate certain liability concerns associated with pandemic countermeasures, and, therefore, ensure that the countermeasures are available and can be administered in the event an avian influenza virus spreads and evolves into a strain capable of causing a pandemic of human influenza.

HHS Secretary's Declaration for the Use of the Public Readiness and Emergency Preparedness Act for Pandemic Influenza Diagnostics, Personal Respiratory Protection Devices, and Respiratory Support Devices

Whereas highly pathogenic avian H5N1 influenza A viruses have spread, through various mechanisms, from Asia through Europe and Africa since 2003 and have caused disease in humans with an associated high case fatality. The real possibility that these viruses could be spread into North America exists as well as the possibility that these H5N1 viruses could participate directly or indirectly in development of a human pandemic strain;

Whereas other animal influenza viruses such as H2N2, H7N2, H7N7 and H9N2 viruses have also caused illness among humans and pose a pandemic threat;

Whereas avian H5N1 or other influenza A viruses might evolve into strains capable of causing a pandemic of human influenza;

Whereas there are countermeasures to identify, reduce exposure to, or support patients infected by highly pathogenic avian H5N1 influenza A viruses, other animal influenza viruses that pose a pandemic threat, or pandemic influenza in humans;

Whereas such countermeasures that currently exist or may be the subject of research and development include diagnostics to identify avian or other animal influenza A viruses that pose a pandemic threat, or to otherwise aid in the diagnosis of pandemic influenza; personal respiratory protection devices to reduce exposure to avian or other animal influenza A viruses; and respiratory support devices to support patients infected by avian or other animal influenza A viruses;

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 spread of avian and other influenza viruses that pose a pandemic threat and resulting disease could in the future constitute a public health emergency.

I. Covered Countermeasures (As required by section 319F–3(b)(1) of the Act)

Covered Countermeasures are defined at section 319F–3(i) of the Act.

At this time, and in accordance with the provisions contained herein, I am recommending the manufacturing, clinical testing, development, and distribution; and, with respect to the category of disease and population described in sections II and IV below, the administration and usage of pandemic influenza diagnostics, personal respiratory protection devices, and respiratory support devices, as defined in section IX of this declaration. The immunity specified in section 319F–3(a) of the Act shall only be in effect with respect to: (1) Present or future Federal contracts, cooperative agreements, grants, interagency agreements, or memoranda of understanding involving countermeasures that are used and administered in accordance with this declaration, and (2) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasure following a declaration of an emergency, as defined in section IX below. In accordance with section 319F–3(b)(2)(E) of the Act, for governmental program planners, the immunity specified in section 319F–3(a) of the Act shall be in effect to the extent they obtain Covered Countermeasures through voluntary means of distribution, such as (1) Donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles. For all other covered persons, including other program planners, the immunity specified in section 319F–3(a) of the Act shall, in accordance with section 319F–3(b)(2)(E) of the Act, be in effect pursuant to any means of distribution.

This declaration shall subsequently refer to the countermeasures identified above as ''Covered Countermeasures.''

This declaration shall apply to all Covered Countermeasures administered or used during the effective period of the declaration.

II. Category of Disease (as required by section 319F–3(b)(2)(A) of the Act)

The category of disease, health condition, or threat to health for which I am recommending the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans with highly pathogenic avian H5N1 influenza A viruses or other animal influenza A viruses that are, or may be capable of developing into, a pandemic strain.

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 uses the Covered Countermeasure or has the Covered Countermeasure administered to him and is in or connected to the geographic location specified in this declaration, or the program planner or qualified person reasonably could have believed that these conditions were met.

The populations specified in this declaration are all persons who use a Covered Countermeasure or to whom a Covered Countermeasure is administered in accordance with this declaration, including, but not limited to: (1) Any person conducting research and development of Covered Countermeasures directly for the Federal government or pursuant to a contract, grant, or cooperative agreement with the Federal government; (2) any person who receives a Covered Countermeasure from, or otherwise uses a Covered Countermeasure under direction from, a persons authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasure, and their officials, agents, employees, contractors, and volunteers following a declaration of an emergency; (3) any person who receives a Covered Countermeasure from, or otherwise uses a Covered Countermeasure under direction from, a person authorized to prescribe, administer or dispense the countermeasure or who is otherwise authorized under an Emergency Use Authorization; and (4) any person who receives a Covered Countermeasure in human clinical trials being conducted directly by the Federal government or pursuant to a contract, grant, or cooperative agreement with the Federal government.

V. Geographic Area (as required by section 319F–3(b)(2)(D) of the Act)

Section 319F–3(a) of the Act applies to the administration and use of a Covered Countermeasure without geographic limitation.

VI. Other Qualified Persons (as required by section 319F–3(i)(8)(B) of the Act)

With regard to the administration or use of a Covered Countermeasure, section 319F–3(i)(8)(A) of the Act defines the term ''qualified person'' as a licensed individual who is authorized to prescribe, administer, or dispense the Covered Countermeasure under the law of the State in which such covered countermeasure was prescribed, administered or dispensed.

Additional persons who are qualified persons pursuant to section 319F–3(i)(8)(B) are the following: (1) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency, and (2) Any person authorized to prescribe, administer, or dispense Covered Countermeasures or who is otherwise authorized under an Emergency Use Authorization.

VII. Additional Time Periods of Coverage After Expiration of Declaration (as required by section 319F–3(b)(3)(B) of the Act)

I have determined that, upon expiration of the time period specified in Section III above, an additional twelve (12) months is a reasonable period to allow for the manufacturer to arrange for disposition and covered persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasure, and the liability protection of section 319F–3(a) of the Act shall extend for that period.

VIII. 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 countermeasures to recipients, management and operation of delivery systems, and management and operation of distribution and dispensing locations.

Authority Having Jurisdiction: means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (e.g., city, county, tribal, State, or Federal boundary lines) or functional (e.g. law enforcement, public health) range or sphere of authority.

Covered Persons: as defined at section 319F–3(i)(2) of the Act, include the United States, manufacturers, distributors, program planners, and qualified persons. The terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' are further defined at sections 319F–3(i)(3), (4), (6), and (8) of the Act.

Declaration of Emergency: a declaration by any authorized local, regional, State, or federal official of an emergency specific to events that indicate an immediate need to administer and use pandemic countermeasures, with the exception of a federal declaration in support of an emergency use authorization under section 564 of the FDCA unless such declaration specifies otherwise.

Pandemic Influenza Diagnostics: means diagnostics to identify avian or other animal influenza A viruses that pose a pandemic threat, or to otherwise aid in the diagnosis of pandemic influenza, when (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.

Pandemic Influenza Personal Respiratory Protection Devices: means personal respiratory protection devices for use by the general public to reduce wearer exposure to pathogenic biological airborne particulates during public health medical emergencies, such as an influenza pandemic, when (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.

Pandemic Influenza Respiratory Support Devices: means devices to support respiratory function for patients infected with highly pathogenic influenza A H5N1 viruses or other influenza viruses that pose a pandemic threat when (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.

Dated: December 17, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–30510 Filed 12–18–08; 4:15 pm]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (NTP BSC). The NTP BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The NTP BSC meeting will be held on February 24, 2009. The deadline for submission of written comments is February 6, 2009, and for pre-registering to attend the meeting, including providing notice of intent to present oral comments, is February 17, 2009. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other accommodations, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the event.

ADDRESSES: The NTP BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP BSC, NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253; fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov.* Courier address: NIEHS, 111 T.W. Alexander Drive, Room K2138, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Shane (telephone: 919–541–4253 or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Availability of Meeting Materials

The primary agenda topic is the peer review of draft substance profiles for some candidate substances under review for the 12th Report on Carcinogens (RoC). The draft substance profiles will be available by December 24, 2008, on the NTP BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Executive Secretary for the NTP BSC (see **ADDRESSES** above). Other materials for the meeting will be posted on the Web site as available. Following the meeting, summary minutes will be prepared and made available on the meeting Web site.

Attendance and Registration

This meeting is scheduled for February 24, 2009, beginning at 8:30 a.m. and continuing until adjournment. It is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP BSC meeting Web site by February 17, 2009, to facilitate access to the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments are invited on the draft substances profiles and should be received by February 6, 2009. Persons submitting written comments should include their name, affiliation (if applicable), phone, e-mail, and sponsoring organization (if any) with the document. Comments submitted in response to this notice will be provided to the NTP BSC and NTP staff and posted on the meeting Web site. The submitter will be identified by name, affiliation, and/or sponsoring organization, if applicable.

Time will be allotted during the meeting for the public to present oral comments to the NTP BSC on the draft substance profiles. Each organization is allowed one time slot per draft profile. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the NTP BSC chair. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for the NTP BSC (see **ADDRESSES** above) by February 6, 2009, to enable review by the NTP BSC prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the NTP BSC and NTP staff and to supplement the record.

Background Information on the Report on Carcinogens

The RoC is a public information document prepared for the U.S. Congress by the NTP in response to Section 301(b)(4) of the Public Health Service Act, as amended. The intent of the document is to provide a listing of those agents, substances, mixtures, or exposure circumstances that are either known or reasonably anticipated to cause cancer in humans and to which a significant number of people in the United States are exposed.

The NTP is following a multi-step scientific review process with multiple opportunities for public input for preparation of the 12th RoC (*http://ntp.niehs.nih.gov/go/29353*) that was announced in the **Federal Register** on April 16, 2007 [72FR18999]. Information about the review of the candidate substance for the 12th RoC, including public comments and background documents, is available on the RoC Web site (*http://ntp.niehs.nih.gov/go/10091*).

Background Information on the NTP Board of Scientific Counselors

The NTP BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the overall program and its centers. Specifically, the NTP BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. NTP BSC meetings are held annually or biannually.

Dated: December 12, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–30288 Filed 12–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–141]

Notice of Draft Document Available for Public Comment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Draft Document Available for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft document available for public comment entitled ''Preventing Deaths and Injuries of Fire Fighters When Fighting Fires in Unoccupied Structures.'' The draft document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/141/.* Comments may be provided to the NIOSH Docket Number above.

PUBLIC COMMENT PERIOD: January 5, 2009 to March 9, 2009.

Status: Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, Mailstop C34, Cincinnati, Ohio 45226, telephone (513)

533–8611. All materials submitted to the Agency should reference NIOSH docket number 141 and must be submitted by March 9, 2009, to be considered by the Agency. All electronic comments should be formatted as Microsoft Word.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226. After the comment period has closed, comments may be accessed electronically at *http://www.cdc.gov/NIOSH* under the link to the NIOSH docket. As appropriate, NIOSH will post comments with the commenters' names, affiliations, and other information, on the Internet.

Background: This document highlights hazards and provides recommendations for preventing fire fighter deaths and injuries when working in structures that are known or suspected to be vacant or unoccupied. This document summarizes fatality statistics from the National Fire Protection Association as well as the NIOSH Fire Fighter Fatality Investigation and Prevention Program (FFFIPP) databases. Selected case reports from the NIOSH FFFIPP program are presented to illustrate the risks to fire fighters entering structures known to be unoccupied and to highlight recommended interventions. The primary audiences are expected to be fire commissioners, fire chiefs, fire department and municipal managers, fire fighters, labor unions, safety and health professionals, trainers, fire investigators, State fire marshals, contractors, building owners and other interested parties.

This guidance document does not have the force and effect of law.

CONTACT PERSON FOR TECHNICAL INFORMATION: Timothy R. Merinar, Safety Engineer, CDC/NIOSH, Division of Safety Research, 1095 Willowdale Road, H1808, Morgantown, West Virginia, 26505, telephone (304) 285–5916, e-mail *tmerinar@cdc.gov.*

Reference: Web address for this document: *http://www.cdc.gov/niosh/review/public/141/.*

Dated: December 15, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–30382 Filed 12–19–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1555–CN]

RIN 0938–AP20

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the update notice published in the **Federal Register** on November 3, 2008, entitled ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009.''

DATES: *Effective Date:* This correction is effective on January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Sharon Ventura, (410) 786–1985.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–26142 of November 3, 2008 (73 FR 65351), the notice entitled ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009'' there were several technical errors that this correction notice serves to identify and correct. The corrections are effective January 1, 2009.

II. Summary of Errors

On pages 65365 through 65382, Addendum B, we are correcting several CBSA names and constituent county references.

III. Correction of Errors

In FR Doc. E8–26142 of November 3, 2008 (73 FR 65351), make the following corrections:

1. On page 65365, in the second column, add ''Manatee County, FL'' under ''Bradenton-Sarasota-Venice, FL''. Then insert ''Sarasota, FL'' under ''Manatee County, FL''.
2. On page 65366, in the second column, ''Charleston-North Charleston, SC'' is corrected to read ''Charleston-North Charleston-Summerville, SC''.
3. On page 65368, in the second column, ''Des Moines, IA'' is corrected to read ''Des Moines-West Des Moines, IA''.
4. On page 65368, in the second column, ''Edison, NJ'' is corrected to read ''Edison-New Brunswick, NJ''.
5. On page 65370, in the second column, ''Greenville, SC'' is corrected to read ''Greenville-Mauldin-Easley, SC''.
6. On page 65370, in the second column, remove ''Litchfield County, CT''.
7. On page 65371, in the second column, ''Houston-Baytown-Sugar Land, TX'' is corrected to read ''Houston-Sugar Land-Baytown, TX''.
8. On page 65371, in the second column, ''Indianapolis, IN'' is corrected to read ''Indianapolis-Carmel, IN''.
9. On page 65372, in the second column, ''Kennewick-Richland-Pasco, WA'' is corrected to read ''Kennewick-Pasco-Richland, WA''.
10. On page 65373, in the second column, add ''Mohave County, AZ'' under ''Lake Havasu City-Kingman, AZ''.
11. On page 65373, in the second column, ''Lakeland, FL'' is corrected to read ''Lakeland-Winter Haven, FL''.
12. On page 65373, in the second column, ''Little Rock-North Little Rock, AR'' is corrected to read ''Little Rock-North Little Rock-Conway, AR''.
13. On page 65373, in the second column, ''Louisville, KY-IN'' is corrected to read ''Louisville-Jefferson County, KY-IN''.
14. On page 65374, in the second column, under Manchester-Nashua, NH'' remove ''Merrimack County, NH''.
15. On page 65374, in the second column, ''McAllen-Edinburg-Pharr, TX'' is corrected to read ''McAllen-Edinburg-Mission, TX''.
16. On page 65375, in the second column, ''Myrtle Beach-Conway-North Myrtle Beach, SC'' is corrected to read ''Myrtle Beach-North Myrtle Beach-Conway, SC''.
17. On page 65375, in the second column, ''Nashville-Davidson-Murfreesboro, TN'' is corrected to read ''Nashville-Davidson-Murfreesboro-Franklin, TN''.
18. On page 65376, in the second column, ''Orlando, FL'' is corrected to read ''Orlando-Kissimmee, FL''.
19. On page 65377, in the second column, ''Port St. Lucie-Fort Pierce, FL'' is corrected to read ''Port St. Lucie, FL''.
20. On page 65380, in the second column, add ''Indian River County, FL'' under ''Sebastian-Vero Beach, FL''.
21. On page 65382, ''Warren-Farmington Hills-Troy, MI'' is corrected to read ''Warren-Troy-Farmington Hills, MI''.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule

take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. Therefore, we are waiving proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This correction notice merely corrects technical errors in Addendum B of the Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2009 and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. Therefore, we do not believe this correction notice is a substantive rule that would be subject to notice and comment rulemaking or a delay in effective date; but rather, merely reflects policies or payment methodologies that were already subject to notice and comment rulemaking and were previously adopted by us. As a result, this notice is intended to ensure that the CY 2009 HHPPS Update Notice accurately reflects the policies adopted after public comment. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the update notice or delaying the effective date of these changes is unnecessary and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 16, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–30453 Filed 12–19–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1411–N]

Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice solicits nominations of five new members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). There will be five vacancies on the Panel as of August 16, 2009.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS), concerning the clinical integrity of the APC groups and their associated weights.

The Secretary rechartered the Panel in 2008 for a 2-year period effective through November 21, 2010.

DATES: *Submission of Nominations:* We will consider nominations if they are received no later than 5 p.m. (e.s.t.), March 13, 2009.

ADDRESSES: You may mail or hand deliver nominations for membership to: Centers for Medicare and Medicaid Services; Attn: Shirl Ackerman-Ross, Designated Federal Official (DFO), Advisory Panel on APC Groups; Center for Medicare Management, Hospital & Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850.

Web Site: For additional information on the APC Panel and updates to the Panel's activities, we refer readers to view our Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*. (Use control + click the mouse in order to access the previous URL.) (Note: There is an underscore after FACA/05_; there is no space.)

Advisory Committee's Information Lines: You may also refer to the CMS Federal Advisory Committee Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

Further Information Contact: Persons wishing to nominate individuals to serve on the Panel or to obtain further information may also contact Shirl Ackerman-Ross, the DFO, at *CMS APCPanel@cms.hhs.gov*, or call (410) 786–4474. (Note: There is no underscore in this e-mail address; there is a space between CMS and APCPanel.), or call 410–786–4474.

News Media: Representatives should contact the CMS Press Office at 202–690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert outside advisory Panel regarding the clinical integrity of the APC groups and relative payment weights that are components of the Medicare hospital Outpatient Prospective Payment System (OPPS).

The Charter requires that the Panel meet up to three times annually. CMS considers the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the next calendar year.

The Panel may consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. (For purposes of the Panel, consultants or independent contractors are not considered to be full-time employees in these organizations.)

The current Panel members are as follows: (The asterisk [*] indicates the Panel members whose terms end on August 16, 2009.)

- E. L. Hambrick, M.D., J.D., Chair, a CMS Medical Officer
- Gloryanne Bryant, B.S., RHIA, RHIT, CCS*
- Kathleen M. Graham, R.N., MSHA, CPHQ
- Patrick A. Grusenmeyer, Sc.D., FACHE
- Judith T. Kelly, B.S.H.A., RHIT, RHIA, CCS
- Michael D. Mills, Ph.D.
- Thomas M. Munger, M.D., FACC*
- Agatha L. Nolen, D.Ph., M.S.
- Randall A. Oyer, M.D.
- Beverly Khnie Philip, M.D.
- Russ Ranallo, M.S., B.S.
- James V. Rawson, M.D.*
- Michael A. Ross, M.D., FACEP
- Patricia Spencer-Cisek, M.S., APRN-BC, AOCN®
- Kim Allen Williams, M.D., FACC, FABC*
- Robert M. Zwolak, M.D., Ph.D., FACS*

Panel members serve without compensation, according to an advance written agreement; however, for the

meetings, CMS reimburses travel, meals, lodging, and related expenses in accordance with standard Government travel regulations.

CMS has a special interest in attempting to ensure, while taking into account the nominee pool, that the Panel is diverse in all respects of the following: Geography; rural or urban practice; race, ethnicity, sex, and disability; medical or technical specialty; and type of hospital, hospital health system, or other Medicare provider subject to the OPPS.

Based upon either self-nominations or nominations submitted by providers or interested organizations, the Secretary, or his designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership under the guidelines of the Federal Advisory Committee Act.

II. Criteria for Nominees

The Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel shall consist of up to 15 members who are representatives of providers. Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. All members must have technical expertise to enable them to participate fully in the Panel's work. The expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently have full-time employment in his or her area of expertise. Members of the Panel serve overlapping terms up to 4 years, based on the needs of the Panel and contingent upon the rechartering of the Panel.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of Nomination;
- Curriculum Vita of the nominee; and
- Written statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, submit a written request to the DFO at the address provided in the **ADDRESSES** section or by e-mail at *CMS APCPanel@cms.hhs.gov*, or call 410–786–4474.

Copies of the Charter are also available on the Internet at the following: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program).

Dated: December 11, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–30454 Filed 12–19–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2283–N]

RIN 0938–AP20

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Permit-Holding Laboratories in the State of New York

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces that CMS has granted exemption from CLIA requirements to laboratories located within the State of New York that possess a valid permit under Article Five of Title V of the Public Health Law of the State of New York and its implementing regulations at 10 N.Y. Comp. Codes R. & Regs., Title V, Part 58.

DATES: *Effective Date:* The exemption granted by this notice is effective, unless revoked, for 6 years from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Val Coppola (410) 786–3531.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Law

Section 353 of the Public Health Service Act (the Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. 263a) generally requires any laboratory that performs tests on human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or assessment of the health of human beings to possess a certificate to perform that category of tests issued by the Secretary of the Department of Health and Human Services (HHS). Under sections 1861(s) of the Social Security Act, the Medicare program will only pay for laboratory services if the laboratory meets the certification requirements under section 353 of the Public Health Service Act. Section 1902(a)(9)(C) of the Social Security Act requires that State Medicaid plans pay only for laboratory services furnished by laboratories in compliance with section 353 of the Act. Subject to specified exceptions, laboratories therefore must have a current and valid CLIA certificate to be eligible for payment from the Medicare or Medicaid programs. Regulations implementing section 353 of the Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in States that enact legal requirements that are equal to or more stringent than CLIA's statutory and regulatory requirements.

Section 353(p) of the Act is implemented in subpart E of regulations at 42 CFR part 493. Sections 493.551 and 493.553 provide that we may exempt from CLIA requirements, for a period not to exceed 6 years, State licensed or approved laboratories in a State if the State licensure program meets specified conditions. Section 493.559 provides that we will publish a notice in the **Federal Register** when we grant approval to an approved State laboratory licensure program. It also provides that the notice will include the following:

- The basis for granting the exemption.
- A description of how the laboratory requirements are equal to or more stringent than those of CLIA.
- The term of approval, not to exceed 6 years.

B. New York State Law

This title is generally applicable to all clinical laboratories operating within the state of New York except those operated by the Federal Government and those operated by a licensed

physician, osteopath, dentist, midwife, nurse practitioner or podiatrist who performs laboratory tests or procedures, personally or through his or her employees, solely as an adjunct to the treatment of his or her own patients. This notice is a repeat of New York State's laboratory licensure program's CMS approval under CLIA, and announces the beginning of a new period of exemption for its permitted laboratories.

II. Notice of Approval of CLIA Exemption to the New York State Laboratories

By this notice, we grant CLIA exemption to all laboratories located in the State of New York that possess a valid and appropriate permit to perform laboratory testing under New York's ''Clinical Laboratory Evaluation Program.''

III. Evaluation of the New York Laboratory Licensure (Permit) Program, the Clinical Laboratory Evaluation Program (CLEP)

The State of New York applied for exemption of its CLEP permit holding laboratories from CLIA program requirements. The State of New York submitted all of the applicable information and attestations required by § 493.551, § 493.553, and § 493.557 for State licensure programs seeking exemption of their licensed laboratories from CLIA program requirements. Examples of the documents and information that were submitted and reviewed are: A comparison of its laboratory licensure requirements with comparable CLIA condition-level requirements and descriptions of its: inspection and proficiency testing monitoring processes, data management and analysis system, investigative and response procedures for complaints received against laboratories, and policies regarding inspections.

IV. CMS and the Centers for Disease Control and Prevention (CDC) Analysis of New York's Application and Supporting Documentation

In order to determine whether we should grant a CLIA exemption to laboratories licensed by a State, we, with staff from CDC, review the application and additional documentation that the State submits to CMS and conducted a detailed and in-depth comparison of the CLEP State licensure (permit) program and CLIA requirements to determine whether the State program meets or exceeds the requirements at subpart E of part 493.

In summary, the State generally must demonstrate that its State licensure program meets the following requirements:

- Has State laws in effect that provide for laboratory licensure/permit program with requirements that are equal to or more stringent than CLIA condition-level requirements for laboratories.
- Has a State licensure program with requirements that are equal to or more stringent than the CLIA condition-level requirements such that a State program licensed laboratory would meet the CLIA condition-level requirements if it were inspected against those requirements.
- Is shown to meet the requirements of § 493.553, § 493.555, and § 493.557(b) and is approved by CMS under § 493.551. For example, among other things, a program would need to:

—Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements.
—Permit CMS or CMS agents to inspect laboratories within the State.
—Require laboratories within the State to submit to inspections by CMS or CMS agents as a condition of licensure.
—Agree to pay the cost of the validation program administered by CMS and the cost of the State's pro rata share of the general overhead to develop and implement CLIA as specified in § 493.645(a), § 493.646(b), and § 493.557(b).
—Take appropriate enforcement action against laboratories found by CMS or CMS agents not to be in compliance with requirements comparable to condition-level requirements, as specified in § 493.557(b).

As specified in our regulations at § 493.555 and § 493.557(b), our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of the following:

- Whether the State's requirements for laboratories are equal to or more stringent than the CLIA condition-level requirements.
- The State's inspection process requirements to determine the following:

—The comparability of the full inspection and complaint inspection procedures to those of CMS.
—The State's enforcement authority and procedures for laboratories found to be out of compliance with its requirements.
—The State's ability to electronically provide CMS with reports and data about adverse actions and corrective actions resulting from unsuccessful proficiency testing participation and with other data we determine to be necessary for validation review and assessment of the State's inspection process requirements.

- The State's agreement with CMS to ensure that the agreement obligates the State to do the following:

—Notify CMS within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned.
—Notify CMS within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.
—Notify each laboratory licensed by the State within 10 days of CMS' withdrawal of the exemption.
—Provide CMS with written notification of any changes in its licensure (or approval) and inspection requirements.
—Disclose to CMS or a CMS agent any laboratory's PT results in accordance with a State's confidentiality requirements.
—Take the appropriate enforcement action against laboratories found by CMS not to be in compliance with CLIA condition-level requirements in a validation survey and report these enforcement actions to CMS.
—Notify CMS of all newly licensed laboratories, including changes in the specialties and subspecialties for which any laboratory performs testing, within 30 days.
—Provide CMS, as requested, inspection schedules for validation purposes.

In keeping with the process described above, CMS, with the assistance of CDC, reviewed and evaluated the application and supporting materials that were submitted by CLEP to verify that the CLEP permit holding laboratories will meet or exceed the requirements of the following subparts of part 493: Subpart H, Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing; Subpart J, Facility Administration for Nonwaived Testing; Subpart K, Quality Systems for Nonwaived Testing, Subpart M, Personnel for Nonwaived Testing; Subpart Q, Inspection; and Subpart R, Enforcement Procedures.

We found that the CLEP requirements mapped to all the applicable CLIA condition-level requirements. The New York State licensure program's inspection process and proficiency testing monitoring processes are equal to or more stringent than those of the CLIA program. Other materials that were submitted demonstrated compliance with the other above-

referenced requirements of subpart E of Part 493. As a result, CMS concluded that the submitted documents supported exempting permit holding laboratories under the CLEP from the CLIA program requirements. Furthermore, a review of CMS' validation inspections conducted by the CMS Regional Office in New York, New York supported that conclusion.

The Federal validation inspections of CLEP permit holding laboratories, as specified in § 493.563, were conducted on a representative sample basis as well as in response to any substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections has been and will continue to be CMS' principal tool for verifying that the laboratories located within the State that hold valid permits are in compliance with CLIA requirements.

The CMS Regional Office in New York has conducted validation inspections of a representative sample (approximately 5 percent) of the laboratories inspected by the New York State Office of Laboratory Quality Assurance (LQA). For some of these validation inspections, CMS surveyors simply accompanied New York State's inspectors, each inspecting against his or her agency's respective regulations. Analysis of the validation data revealed no significant differences between the State and Federal findings. The validation surveys verified that the CLEP inspection process covers all CLIA conditions applicable to each laboratory being inspected, and also verified that the CLEP licensure (permit) requirements meet or exceed CLIA condition-level requirements. The CMS validation surveys found the State inspectors highly skilled and qualified. The CLEP inspected laboratories in timely fashion, that is, all laboratories were inspected within the required 24-month cycle. All parameters monitored by CMS' New York Regional Office to date indicate that the State of New York is meeting all requirements for approval of CLIA exemption.

This Federal monitoring will continue as an on-going process.

V. Conclusion

Based on review of the documents submitted by the New York State laboratory licensure program, CLEP, pursuant to the requirements of subpart E of part 493, as well as the outcome of the validation inspections conducted by the CMS Regional Office in New York, we find that the State of New York laboratory licensure program meets the requirements of 42 CFR 493.551(a), and that as a result, we may exempt from CLIA program requirements all State licensed (permitted) or approved laboratories.

Approval of the CLIA exemption for laboratories located within and permitted by the State of New York is subject to removal if we determine that the outcome of a comparability review or a validation review inspection is not acceptable, as described under § 493.573 and § 493.575, or if the State of New York fails to pay the required fee every 2 years as required under § 493.646.

VI. Laboratory Data

In accordance with our regulations at § 493.557(b)(8), the State of New York will continue to agree to provide us with changes to a laboratory's specialties or subspecialties based on the State's survey. The State of New York also will provide us with changes in a laboratory's certification status.

VII. Required Administrative Actions

CLIA is a user-fee funded program. The registration fee paid by laboratories is intended to cover the cost of the development and administration of the program. However, when a State's application for exemption is approved, we do not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State, as specified in § 493.645.

Accordingly, the State of New York must pay for the following:

- Costs of Federal inspection of laboratories in the State to verify that New York State's CLEP requirements are enforced in an appropriate manner. The average Federal hourly rate is multiplied by the total hours required to perform Federal validation surveys within the State.
- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We will bill the State of New York on a semiannual basis.
- The State of New York's proportionate share of the costs associated with establishing, maintaining, and improving the CLIA computer system, a portion of those services from which the State of New York received direct benefit or contributed to the CLIA program in the State. Thus, the State of New York is being charged for a portion of CMS' direct and indirect costs as well as a portion of the costs incurred by the CDC and the Food and Drug Administration (FDA) in carrying out their responsibilities under CLIA.

In order to estimate the State of New York's proportionate share of the general overhead costs to develop and implement CLIA, we determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.5 percent of the registered laboratories are in the State of New York. We determined that a corresponding percentage of the applicable CDC, FDA, and CMS costs should be borne by the State of New York.

The State of New York has agreed to pay us the State's pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

VIII. Approval

In light of the foregoing, CMS grants approval of the State of New York's laboratory licensure program (CLEP) under Subpart E. All laboratories located within the State of New York and hold valid CLEP permits are CLIA-exempt for all specialties and subspecialties.

Authority: Section 353(p) of the Public Health Service Act (42 U.S.C. 263a).

Dated: November 7, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–30452 Filed 12–19–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects

Title: Hispanic Healthy Marriage Initiative Grantee Implementation Evaluation.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), in partnership with the Office of the Assistant Secretary for Planning, Research and Evaluation (ASPE), U.S. Department of Health and Human Services, is proposing an information collection activity as part of the Hispanic Healthy Marriage Initiative (HHMI) Grantee Implementation Evaluation study. The proposed information collection consists of two components: (1) Semistructured interviews with key respondents involved with selected marriage education programs serving Hispanic couples and individuals; and (2) focus

groups with Hispanic individuals and couples participating in selected marriage education programs or declining to participate in such programs. Through this information collection and other study activities, ACF and ASPE seek to identify the unique cultural needs of Hispanic couples and families that have implications for the design and delivery of healthy marriage education services to Hispanics, recognizing their diversity with respect to country of origin, language, and level of acculturation, among other factors.

Respondents: Marriage education program directors and managers; staff responsible for outreach, recruitment and intake activities in marriage education programs; marriage education instructors; and key persons in partner organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Staff Discussion Guide	81	1	2	162
Partners/Community Leaders Discussion Guide	54	1	2	108
Participant Focus Group Discussion Guide	180	1	1	180
Estimated Total Annual Burden Hours				450

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 11, 2008.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. E8–30172 Filed 12–19–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0298] (formerly Docket No. 2004D–0499)

Compliance Policy Guide; Radiofrequency Identification Feasibility Studies and Pilot Programs for Drugs; Notice to Extend Expiration Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of expiration date.

SUMMARY: The Food and Drug Administration (FDA) is extending the expiration date of compliance policy guide (CPG) Sec. 400.210 entitled ''Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs'' to December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Ilisa Bernstein, Office of the Commissioner, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4341, Silver Spring, MD 20993–0002, 301–796–4830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 17, 2004 (69 FR 67360), FDA announced the availability of CPG Sec. 400.210 entitled ''Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs.'' FDA has identified RFID as a promising technology to be used in the various efforts to combat counterfeit drugs. The CPG describes how the agency intends to exercise its enforcement discretion regarding certain regulatory requirements that might otherwise be applicable to studies involving RFID technology for drugs. The goal of the CPG is to facilitate performance of RFID studies and to allow industry to gain experience with the use of RFID technology and its effect on the long-term safety and integrity of the U.S. drug supply.

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA) was signed into law. Section 913 of FDAAA addresses pharmaceutical safety and creates section 505D of the Federal Food, Drug, and Cosmetic Act (the act). Section 505D(b) of the act requires the development of standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. Section 505D(b)(3) of the act states that these new standards shall address promising technologies, which may include RFID technology.

In implementing section 505D of the act, FDA is currently addressing issues, such as promising technologies, that are relevant also for the CPG. In addition, FDA is considering further the experience of stakeholders and the agency under the CPG. As we consider all of these issues, the CPG will remain in effect until December 31, 2010.

Dated: December 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30297 Filed 12–19–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0603]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Tissue Expander; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Tissue Expander.'' This draft guidance document describes a means by which the tissue expander device type may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to classify this device type into class II (special controls). This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on a final version of the guidance, submit written or electronic comments on the draft guidance by March 23, 2009.

ADDRESSES: Submit written requests for single copies of the FDA draft guidance document entitled ''Class II Special Controls Guidance Document: Tissue Expander'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nada Hanafi, Center for Devices and Radiological Health (HFZ–4), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8848

SUPPLEMENTARY INFORMATION:

I. Background

A tissue expander is a device intended for temporary (less than 6 months) subdermal implantation to stretch the skin for surgical applications, specifically to develop surgical flaps and additional tissue coverage. It is made of an inflatable silicone elastomer shell filled with Normal Physiological Saline (injection grade). On August 25 and 26, 2005, the General and Plastic Surgery Devices Panel (the Panel) recommended that the tissue expander be classified into class II and that the special control should be a special controls guidance document and labeling. The Panel also considered the types of information the agency should include in a class II special controls guidance document. FDA considered the Panel's recommendations and, elsewhere in this issue of the **Federal Register**, FDA is proposing to classify the tissue expander into class II. If this classification rule is finalized, FDA intends that this guidance document will serve as the special control for this device.

Following the effective date of any final classification rule based on this proposal, any firm submitting a premarket notification (510(k)) for a tissue expander will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the tissue expander device type. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Tissue Expander,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1628 to identify the guidance you are requesting.

The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control no. 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control no. 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control no. 0910–0078; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control no. 0910–0130; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets

Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 16, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30440 Filed 12–19–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044): Extension

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, and an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR–HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimate of burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment HRSA–519	2,011	1	2,011	0.166	334
AOR–HRSA–501	907	1	907	4	3,628
Total	2,918		2,918		3,962

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 15, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–30284 Filed 12–19–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Extension

Under the Health Resources and Services Administration (HRSA) Faculty Loan Repayment Program, degree

trained health professionals and full-time students in their final year of study from disadvantaged backgrounds may enter into a contract under which the Department of Health and Human Services will make payments on eligible health professions educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions college or university. Applicants must complete an application and provide all other required documentation, including information on all eligible health professions educational loans.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Online application	181	1	181	1	181
Institution Employment Form	181	1	181	1	181
Loan Information & Verification Form	181	3	543	1	543
Checklist Form	181	1	181	.50	90.50
BCRSIS Online Banking Form	181	1	181	.50	90.50
Total	181	7	543	4	1,068

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 15, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–30286 Filed 12–19–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: January 8, 2009, 3 p.m.–4:45 p.m.; January 9, 2009, 9 a.m.–4:45 p.m.; and January 10, 2009, 8:45 a.m.–1:30 p.m.

Place: Hilton Washington DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852, Phone: 301–468–1100.

Status: The meeting will be open to the public.

Agenda: The Council will be convening in Rockville, Maryland, to hear updates from the Bureau of Clinician Recruitment and Service (BCRS), discuss recruitment strategies for the National Health Service Corps, and address current workforce issues. The agenda will also cover priorities to be set for the 2009 calendar year for the Council.

For Further Information Contact: Tira Patterson, BCRS, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857; e-mail: *TPatterson@hrsa.gov;* telephone: 301–594–4140.

Dated: December 15, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–30298 Filed 12–19–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service Background; Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children, OPM–306

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (73 FR 23254) on September 24, 2008, and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0028, ''IHS Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children, OPM–306. *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0028, ''IHS Background Investigations of Individuals in Positions Involving Regular Contact With or Control Over Indian Children, OPM–306.''

Form Number: OPM–306. *Forms:* Declaration for Federal Employment. *Need and Use of Information Collection:* This is a request for approval of information collection required by Section 408 of the Indian Child Protection and Family Violence Prevention Act, Pub. L. 101–630, 104 Stat. 4544, and 25 U.S.C. 3201–3211. The IRS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children. Section 3207(b) of the Indian Child Protection and Family Violence Prevention Act was amended by Section 814 of U.S.C. 3031, the Native American Laws Technical Corrections Act of 2000, which requires that the regulations prescribing the minimum standards of character ensure that none of the individuals appointed to positions involving regular contact with, or control over, Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. In addition, 42 U.S.C. 13041 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that

hires (or contracts for hire) individuals involved with children under the age of 18 or child care services to assure that all existing and newly hired employees undergo a criminal history background check. The background check is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision to children under the age of 18 or child care services, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, estimated number of respondents, responses per respondent, average burden hour per response, and total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per espondent	Average burden hour per response	Total annual burden hours
Addendum to OPM–306 Declaration for Federal Employment 42 CFR Part 36	3,000	1	12/60	600
Total	3,000	1		600

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s) contact: Ms. Janet Ingersoll, Freedom of Information Act Coordinator, 801 Thompson Avenue, Suite 450, Rockville, MD 20852–1601; call non-toll free (301) 443–1116; send via facsimile to (301) 443–9879; or send your e-mail requests, comments, and return address to: *Janet.lngersoll@ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: December 15, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–30330 Filed 12–19–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service; HIV Knowledge/Attitudes/Practice Customer Survey

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (73 FR 23254) on August 25, 2008 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–NEW, ''Indian Health Service HIV Knowledge/Attitudes/Practice Customer Survey.'' *Type of Information Collection Request:* This is a one time survey to deliver the mission of the IRS and Centers for Disease Control (CDC) national guidelines collection, 0917–NEW, ''Indian Health Service HIV Knowledge/Attitudes/Practice Customer Survey.'' *Form Number(s):* None. Need and Use of Information Collection: The IHS goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, the Division of Epidemiology and Disease Prevention (DEDP) and the Human Immunodeficiency Virus (HIV) Program collaborate to provide programmatic, technical, and financial assistance to IRS Areas and Service Units for improving prevention, detection, and treatment of infectious and chronic disease, specifically in this case, HIV and Sexually Transmitted Disease (STD).

The ''HIV Knowledge/Attitudes/Practice Customer Survey'' (hereafter referred to as Customer Survey), will provide the information needed to understand the most effective and appropriate methods to complete these goals. With the information collected from patients, the DEDP and HIV programs will be able to offer recommendations to Service Units on how to best scale up screening for sensitive topics such as HIV and STDs in AllAN communities. Also, the information will give lETS the tools to assist the IHS Service Units with implementation of current national recommendations by CDC. At the

moment, the DEDP and HIV programs are encouraging uptake of current CDC national recommendations; however, without this information, the DEDP and HIV programs are unable to maximize effectiveness, dispel myths, and identify misinformation.

Voluntary customer surveys will be conducted through self-administered questionnaires, face-to-face interviews, and potentially electronic media. The information gathered will be used by DEDP and the HIV Program to identify how patients would prefer to be offered expanded testing in a way that is respectful, confidential, and effective.

Affected Public: Individuals. *Type of Respondents:* IHS customers.

The table below provides: Types of data collection instruments, estimated number of respondents, responses per respondent, average burden hour per response, and total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
Customer Survey	1,000	1	10/60	166
Total	1,000			166

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Send written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection instrument(s) and/or instruction(s) contact: Ms. Janet Ingersoll, Freedom of Information Act Coordinator, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852–1601; call non-toll free (301) 443–1116; send via facsimile to (301) 443–9879; or e-mail requests, comments, and return address to: *Janet.Ingersoll@ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: December 15, 2008.

Robert G. McSwain,

Director, Indian Health Service.

[FR Doc. E8–30329 Filed 12–19–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: March 16–17, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, At the Chevy Chase Pavilion, 4300 Military Road, Washington, DC 20015.

Contact Person: Katrina L. Foster, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30324 Filed 12–19–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel EUREKA Review, RFA GM–09–008.

Date: March 2–3, 2009.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, Ten Thomas Circle, NW., Washington, DC 20005.

Contact Person: Philippe Marmillot, PhD, Scientific Review Officer, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm. 2017, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30325 Filed 12–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee.

Date: March 2–3, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, Ten Thomas Circle, NW., Washington, DC 20005.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm. 2019, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271 Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30326 Filed 12–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Initial Review Group, Epidemiology, Prevention and Behavior Research, Review Subcommittee.

Date: March 24–25, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Tyson's Corner, 1960 Chain Bridge Road McLean, VA 22102.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 2121, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–30328 Filed 12–19–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0015]

National Incident Management System Guideline for the Credentialing of Personnel

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the National Incident Management System (NIMS) Guideline for the Credentialing of Personnel (the *Guideline*). The *Guideline* provides guidance on how to best credential the personnel who respond to incidents, including large-scale terrorist attacks and catastrophic natural disasters that require inter-State deployable mutual aid.

DATES: Comments must be received by January 21, 2009.

ADDRESSES: The *Guideline* is available online at *http://www.regulations.gov.* You may also view a hard copy of the *Guideline* at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the *Guideline*, identified by Docket ID FEMA–2008–0015, using one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments, to the proper Docket ID.

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted,

without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Robert Schweitzer, Executive Director, National Preparedness Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–3234.

SUPPLEMENTARY INFORMATION: On February 28, 2003, the President issued Homeland Security Presidential Directive—5 (HSPD–5), Management of Domestic Incidents, which directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system provides a consistent nationwide template to enable Federal, State, tribal, and local governments, the private sector, and nongovernmental organizations to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity. This consistency provides the foundation for utilization of NIMS for all incidents, ranging from daily occurrences to incidents requiring a coordinated Federal response. NIMS represents a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management. One of the elements of NIMS is the credentialing of personnel that may respond to disasters.

The *Guideline* provides guidance on how to best credential the personnel who respond to incidents, including large-scale terrorist attacks and catastrophic natural disasters that require inter-State deployable mutual aid. The *Guideline* will encourage interoperability among Federal, State, and local officials and will facilitate deployment for response and/or restoration. The *Guideline* will allow incident commanders to exercise enhanced access control in times of crisis.

For non-Federal stakeholders, the *Guideline* will help ensure that when called upon for mutual aid, emergency response officials from multiple jurisdictions and sectors will have interoperable processes. This will enable emergency response officials to spend less time processing and being processed and more time responding to the incident. The *Guideline* is built upon scalable, flexible, and adaptable coordinating structures to align key roles and responsibilities across the Nation. It describes specific authority and best practices for managing interstate disasters and integrates credentialing within the Incident Command System.

FEMA solicits comments on the draft *Guideline*, which is available in Docket ID FEMA–2008–0015 at *http://www.regulations.gov.*

Authority: Homeland Security Act of 2002, Public Law 107–296, as amended; Homeland Security Presidential Directive—5, *Management of Domestic Incidents,* and Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, Section 408 and 409.

Dated: December 8, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–30333 Filed 12–19–08; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0016]

National Incident Management System Intelligence/Investigations Function Guidance Document

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the National Incident Management System (NIMS) Intelligence/Investigations Function Guidance Document (*NIMS I&I*). This document provides guidance on utilizing and integrating the Intelligence/Investigations Function while adhering to the concepts and principles of the NIMS. *NIMS I&I* presents information intended for the ICS practitioner that will assist in the decision-making process regarding the placement of the Function within the command structure, and provides tools that may be used while implementing the Function. The Function has aspects that cross disciplines, including traditional law enforcement, epidemiological investigations, regulatory investigations, and medical examiner/coroner investigations, as well as those conducted by the National Transportation Safety Board or other investigatory agencies. This Function can be utilized for planned events, as well as incidents.

DATES: Comments must be received by January 21, 2009.

ADDRESSES: The *NIMS I&I* is available online at *http://www.regulations.gov*. You may also view a hard copy of the *NIMS I&I* at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the *NIMS I&I*, identified by Docket ID FEMA–2008–0016, using one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments, to the proper Docket ID.

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Robert Schweitzer, Executive Director, National Preparedness Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–3234.

SUPPLEMENTARY INFORMATION: On February 28, 2003, the President issued Homeland Security Presidential Directive–5 (HSPD–5), Management of Domestic Incidents, which directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system provides a consistent nationwide template to enable Federal, State, tribal, and local governments, the private sector, and nongovernmental organizations to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity. This consistency provides the foundation for utilization of NIMS for all incidents, ranging from daily occurrences to incidents requiring a coordinated Federal response. NIMS represents a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management. One of the elements of NIMS is the Intelligence/Investigations Function within the Incident Command System (ICS).

This document provides guidance on utilizing and integrating the Intelligence/Investigations Function while adhering to the concepts and principles of the National Incident Management System (NIMS). The Intelligence/Investigations Function within the Incident Command System (ICS) provides a flexible and scalable framework that will allow for the integration of intelligence and investigations activities and information. This guidance and the accompanying Intelligence/Investigations Field Operations Guide (IIFOG) are applicable in all situations involving intelligence/investigations information, ranging from everyday operations that utilize conventional unclassified information, to terrorist incidents where the information is classified at the highest levels and requires the incorporation of national intelligence capabilities provided by U.S. Intelligence Community assets. The document presents information intended for the ICS practitioner (including the Incident Commander/Unified Command) that will assist in the decision-making process regarding the placement of the Function within the command structure, and provides tools that may be used while implementing the Function.

The activities and information that are at the core of this Function are often viewed as primary responsibilities of ''traditional'' law enforcement. In many cases, intelligence/investigations duties are fulfilled by law enforcement department/agencies, but this Function has aspects that cross disciplines. ''Nontraditional,'' non-law enforcement forms of investigation might include epidemiological investigations, regulatory investigations, and medical examiner/coroner (ME/C) investigations, as well as those conducted by the National Transportation Safety Board or other investigatory agencies. Moreover, this Function can be utilized for planned events, as well as incidents.

FEMA solicits comments on the draft *NIMS I&I*, which is available in Docket ID FEMA–2008–0016 at *http://www.regulations.gov*.

Authority: Homeland Security Act of 2002, as amended, 6 U.S.C. 101 *et seq.*; Homeland Security Presidential Directive—5, *Management of Domestic Incidents*; and Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, Section 408 and 409.

Dated: December 12, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–30332 Filed 12–19–08; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1848 Suntide Road, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory, became effective on May 21, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30338 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 5401 Evergreen Ave., Jacksonville, FL 32208, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border

Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories, *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 21, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30339 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 134 Heinsohn Rd. Suite A Corpus Christi, TX 78406, Corpus Christi, TX 78469, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 8, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30343 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 18251 Cascades Ave. South Suite A, Tukwila, WA 98188, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories, *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on July 29, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30337 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1501 Delmar B. Drawdy Dr., Tampa, FL 33605, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/*

labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on July 23, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30340 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 414 Westchester, Corpus Christi, TX 78469, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on May 20, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30342 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Altol Chemical and Environmental Lab Inc, as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Altol Chemical and Environmental Lab Inc, as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Altol Chemical and Environmental Lab Inc, Sabanetas Industrial Park, Building M–1380, Ponce, PR 00715, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation of Altol Chemical and Environmental Lab Inc, as commercial laboratory became effective on September 16, 2008. The next triennial inspection date will be scheduled for September 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30347 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Inspectorate America Corporation, as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Inspectorate America Corporation, as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Inspectorate America Corporation, 2184 Jefferson Hwy., Lutcher, LA 70071, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation of Inspectorate America Corporation, as commercial laboratory became effective on June 24, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30348 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 1020 Holland Sylvania Road, Holland, OH 43528, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on September 9, 2008. The next triennial inspection date will be scheduled for September 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 12, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–30344 Filed 12–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–74]

Construction Complaint—Request for Financial Assistance

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.

The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction. The information is also used to identify builders not conforming to applicable standards and to determine eligibility for financial assistance.

DATES: *Comments Due Date:* January 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0047) 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: Construction Complaint—Request for Financial Assistance.

OMB Approval Number: 2502–0047.

Form Numbers: HUD–92556.

Description of the Need for the Information and Its Proposed Use: The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction. The information is also used to identify builders not conforming to applicable standards and to determine eligibility for financial assistance.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	10	1		2		5

Total Estimated Burden Hours: 5.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 16, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–30293 Filed 12–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–73]

Local Appeals to Single-Family Mortgage Limits

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.

Housing industry groups may appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's).

DATES: *Comments Due Date:* January 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0302) 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: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Housing industry groups may appeal for increases in FHA's maximum mortgage limits for specific counties or metropolitan statistical areas (MSA's).

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours perresponse	=	Burden hours
Reporting Burden	4500		1		6.88		31,000

Total Estimated Burden Hours: 31,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 16, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–30294 Filed 12–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–72]

Manufactured Housing Dispute Resolution-State Certification Form; Information for Federal Manufactured Housing Dispute Resolution

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.

HUD collects this information to establish a manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs. Form HUD–310–DRSC allows a state to certify that its state dispute resolution program meet the program requirements. Form HUD–311–DR allows persons who have initiated their participation in the federal dispute resolution program to submit the necessary information regarding their request to the federal program for further action. There are two groups of respondents. The first group is the 50 states; the second group consists of individual purchasers, manufacturers, retailers, and installers of manufactured housing. HUD has engaged dispute resolution professionals from various federal agencies to review the submissions and then possibly contact the submitting party or agency, and to act as neutrals, mediators, and arbitrators.

DATES: *Comments Due Date:* January 21, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0562) 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: Manufactured Housing Dispute Resolution—State Certification Form; Information for Federal Manufactured Housing Dispute Resolution.

OMB Approval Number: 2502–0562.

Form Numbers: HUD–310–DRSC and HUD–311–DR.

Description of the Need for the Information and its Proposed Use: HUD collects this information to establish a manufactured housing dispute resolution program for states that choose not to operate their own dispute resolution programs. Form HUD–310–DRSC allows a state to certify that its state dispute resolution program meets the program requirements. Form HUD–311–DR allows persons who have initiated their participation in the federal dispute resolution program to submit the necessary information regarding their request to the federal program for further action there are two groups of respondents. The first group is the 50 states; the second group consists of individual purchasers, manufacturers, retailers, and installers of manufactured housing. HUD has engaged dispute resolution professionals from various federal agencies to review the submissions and then possibly contact the submitting party or agency, and to act as neutrals, mediators, and arbitrators.

Frequency of Submission: On occasion, Other Triennially.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	228	1		2.24		511

Total Estimated Burden Hours: 511.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 16, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–30295 Filed 12–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–75]

Multifamily Financial Management Template

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.

The uniform Financial Reporting Standards (UFRS) regulation requires HUD's multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. Electronic submissions of this data will require the use of a template.

DATES: *Comments Due Date: January 21, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0551) 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: Multifamily Financial Management Template.

OMB Approval Number: 2502–0551.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The uniform Financial Reporting Standards (UFRS) regulation requires HUD's multifamily housing program participants to submit financial data electronically, using generally accepted accounting principles, in a prescribed format. Electronic submissions of this data will require the use of a template.

Frequency of Submission: Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20,774		1		2.58		53,784

Total Estimated Burden Hours: 53,784.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 16, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–30292 Filed 12–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2008-N0339] [91100-3740-GRNT-7C]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; 1018-0113; Neotropical Migratory Bird Conservation Act (NMBCA) Grant Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on December 31, 2008. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before January 21, 2009.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0113.

Title: Neotropical Migratory Bird Conservation Act (NMBCA) Grant Programs.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Affected Public: Domestic or foreign individuals; corporations, partnerships, trusts, associations, or other private entities; and State/local/tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion. This grants program has one project proposal submission per year. Annual reports are due 90 days after the anniversary date of the grant agreement. Final reports are due 90 days after the end of the project period. The project period is up to 2 years.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Grant Applications	100	120	70 hours	8,400
Reports	65	75	30 hours	2,250
Totals	165	195		10,650

Abstract: The Neotropical Migratory Bird Conservation Act establishes a matching grants program to fund projects that promote the conservation of neotropical migratory birds in the United States, Canada, Latin America, and the Caribbean. The purposes of NMBCA are to:

(1) Perpetuate healthy populations of neotropical migratory birds;

(2) Assist in the conservation of these birds by supporting conservation initiatives in the United States, Canada, Latin America, and the Caribbean; and

(3) Provide financial resources and foster international cooperation for those initiatives.

Principal conservation actions supported by NMBCA are:

(1) Protection and management of neotropical migratory bird populations.

(2) Maintenance, management, protection, and restoration of neotropical migratory bird habitat.

(3) Research and monitoring.

(4) Law enforcement.

(5) Community outreach and education.

We publish notices of funding availability on the Grants.gov website (http://www.grants.gov) as well as in the Catalog of Federal Domestic Assistance (http://cfda.gov). To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the Fish and Wildlife Service and the requirements of NMBCA.

Materials that describe the program and assist applicants in formulating project proposals for consideration are available on our website at http://www.fws.gov/birdhabitat. Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 2002.

Comments: On June 24, 2008, we published in the Federal Register (73 FR 35704) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on August 25, 2008. We received one comment. The comment expressed opposition to the NMBCA grants program, but did not address the information collection requirements. We did not make any changes to our information collection requirements as a result of this comment.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 28, 2008

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–30432 Filed 12–19–08; 8:45 am

BILLING CODE 4310–55–S

U.S. DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2008–N0282; 81640–1265–0000–S3]

Farallon National Wildlife Refuge, San Francisco County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft comprehensive conservation plan and environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that the Farallon National Wildlife Refuge (Refuge) Draft Comprehensive Conservation Plan and Environmental Assessment (draft CCP/EA) is available for review and comment. Also available for review are the draft compatibility determinations for research and monitoring, media access, and environmental education and monitoring through a remote camera system.

DATES: To ensure that we have adequate time to evaluate and incorporate suggestions and other input into the planning process, we must receive comments on or before February 20, 2009.

ADDRESSES: For information on obtaining documents and submitting comments, see ''Public Review and Comment'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, (510) 792–0222.

SUPPLEMENTARY INFORMATION:

The National Wildlife Refuge System Administration Act of 1966, as amended by the Improvement Act, requires us to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, which can include opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Background

The Refuge is located off the coast of San Francisco and is within San Francisco County. The 211-acre Refuge consists of four island groupings that were first designated as a Refuge in 1909 ''as a preserve and breeding ground for native birds'' (Executive Order 1043, Feb. 27, 1909). The Refuge supports the largest seabird breeding colony in the contiguous United States and provides wintering and nesting habitat for migratory seabirds and pinnipeds. In 1974, Congress enacted Pub. L. 93–550, which designated all the islands except for Southeast Island as the Farallon Wilderness, totaling 141 acres.

Alternatives

The draft CCP/EA identifies and evaluates four alternatives for managing Farallon National Wildlife Refuge for the next 15 years. Each alternative describes a combination of wildlife, habitat, and public use management prescriptions designed to achieve Refuge purposes. Of the alternatives described below, we believe Alternative C would best achieve the purposes of the Refuge, and therefore we have identified C as the Preferred Alternative.

Alternative A, the no-action alternative, assumes no change from current management programs and is considered the baseline with which to compare other alternatives. Under this alternative, the focus of the Refuge would be to continue to protect and maintain habitats for nesting seabirds including restoration of native vegetation. Wildlife research and monitoring would continue. The Refuge would remain closed to the public, with the exception of requested media visits that are closely supervised by Refuge staff.

Alternative B calls for the development of a vegetation management and monitoring plan to accelerate weed removal and restoration of native vegetation. Non-native house mice would be eradicated to reduce predation of seabirds and a tiered National Environmental Policy Act planning document would be prepared to evaluate the eradication methods and protocols. Public involvement opportunities for this tiered plan would be provided. New research and monitoring methods would be implemented to improve wildlife management. In addition, new or expanded research studies will also be implemented to study other wildlife on the Refuge (e.g., arboreal salamanders, hoary bats, and insects). Law enforcement to reduce wildlife disturbance would be increased through coordination with other agencies and outreach to boaters and pilots. The Refuge would remain closed to public access under this alternative, but limited supervised access for media personnel in order to further public education and provide outreach opportunities for the public would be allowed. While land-based wildlife observation would not be allowed, Refuge staff will coordinate with charter boat operators to enhance their wildlife tours in waters surrounding the Refuge. This alternative also includes outreach and environmental education objectives, including coordination with other outreach organizations in the San Francisco area, the development of environmental education programs and materials for outreach events, a remote camera system, and expanding the existing Farallon program in elementary schools.

Alternative C, the preferred alternative, would include the same components as Alternative B. In addition, a visitor service plan would be developed to consider on-site visitor opportunities such as tours and volunteer activities. Additional areas on Southeast Island would also be considered for seasonal closure to

human access (for management purposes) to provide additional nesting habitat and reduce spread of non-native vegetation.

Alternative D would include the same components as Alternative B, but would be more restrictive in terms of access. Human access (for management purposes) would be prohibited at North Landing, portions of Lighthouse Hill, and additional areas during the seabird nesting season to reduce disturbance, encourage expansion of nesting habitat, and prevent the spread of invasive plants. Wildlife monitoring would be reduced as a result of the closures. The Refuge would remain closed to public access. This alternative would also include use of a remote camera system to provide remote monitoring and wildlife observation opportunities.

Public Review and Comment

To obtain a copy of the draft CCP/EA, write to Winnie Chan, Refuge Planner, Farallon NWR CCP, San Francisco Bay NWR Complex, 9500 Thornton Avenue, Newark, CA 94560. You may view a copy of the draft CCP/EA at this address, or you may view it or download it online at: *http://www.fws.gov/cno/refuges/farallon/.*

Hard copies of the draft CCP/EA are also available at the following locations:

- San Francisco Bay National Wildlife Refuge Complex, 1 Marshlands Road, Fremont, CA 94536.
- San Francisco Public Library, Federal Documents, 100 Larkin Street, San Francisco, CA 94102.
- CA/NV Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825.

Address any comments on the draft CCP/EA to: Winnie Chan, Refuge Planner, Farallon NWR CCP, San Francisco Bay NWR Complex, 9500 Thornton Avenue, Newark, CA 94560. You may also e-mail comments to *sfbaynwrc@fws.gov* or fax them to (510) 792–5828. If submitting by fax or e-mail, please type ''FNWR CCP'' in the subject line.

Public Comments

After the review and comment period ends for this Draft CCP/EA, we will analyze comments and address them in our final CCP/EA. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Richard E. Sayers, Jr.,

Acting Regional Director, California and Nevada Region, Sacramento, California.

[FR Doc. E8–30308 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14866–A, F–14866–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sea Lion Corporation. The lands are in the vicinity of Hooper Bay, Alaska, and are located in:

Seward Meridian, Alaska

T. 21 N., R. 83 W.,
Sec. 3;
Secs. 6 to 10, inclusive;
Secs. 15 to 18, inclusive.
Containing approximately 4,775 acres.

T. 22 N., R. 83 W.,
Secs. 6 and 7;
Secs. 11 to 14, inclusive;
Secs. 23, 24, and 26;
Secs. 27 and 34.
Containing approximately 6,393 acres.

T. 21 N., R. 84 W.,
Secs. 1 to 5, inclusive;
Secs. 7 to 15, inclusive;
Sec. 24.
Containing approximately 7,960 acres.

T. 22 N., R. 84 W.,
Secs. 1 and 2;
Secs. 11 and 12;
Secs. 14, 18, 19, and 23;
Secs. 26 to 30, inclusive;
Secs. 32 to 36, inclusive.
Containing approximately 9,520 acres.

T. 20 N., R. 85 W.,
Secs. 5 to 9, inclusive;
Secs. 16 and 17;
Secs. 20 and 21.
Containing approximately 4,866 acres.

T. 21 N., R. 85 W.,
Sec. 1;
Secs. 8 to 12, inclusive;
Secs. 16 and 17;
Secs. 20 and 21;
Secs. 27, 28, and 29;
Secs. 33, 34, and 35.
Containing approximately 8,452 acres.

T. 22 N., R. 85 W.,
Secs. 11, 13, and 14;
Secs. 23 to 26, inclusive.
Containing approximately 3,732 acres.

T. 20 N., R. 86 W.,
Secs. 1, 2, and 12.
Containing approximately 1,699 acres.

T. 21 N., R. 86 W.,
Secs. 1, 2, and 3;
Secs. 7 to 12, inclusive;
Secs. 15 to 23, inclusive;
Secs. 26 to 35, inclusive.
Containing approximately 13,703 acres.

T. 18 N., R. 91 W.,
Secs. 13 to 16, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 7,012 acres.

T. 15 N., R. 92 W.,
Secs. 4 to 7, inclusive.
Containing approximately 2,469 acres.

T. 16 N., R. 92 W.,
Secs. 3, 4, and 10;
Secs. 15, 21, 22, and 27;
Secs. 28 to 34, inclusive.
Containing approximately 4,185 acres.

T. 15 N., R. 93 W.,
Secs. 1 and 12.
Containing approximately 849 acres.

T. 16 N., R. 93 W.,
Sec. 36.
Containing approximately 52 acres.
Total aggregate of approximately 75,667 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Sea Lion Corporation. The remaining lands lie within Clarence Rhode National Wildlife Range, established January 20, 1969. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 21, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device

(TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–30346 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–310–5420–FR–D046, DK–G08–0004; IDI–35568]

Notice of Application for Recordable Disclaimer of Interest in Lands, Bingham County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application has been filed by Randy Lynne Jackson, personal representative of the estate of Donald F. Jackson, deceased, for a Recordable Disclaimer of Interest from the United States for land in Bingham County, Idaho. This notice is intended to inform the public of the pending application.

DATES: Comments or protests to this action should be received by *March 23, 2009.*

ADDRESSES: Comments must be filed with Tom Dyer, State Director, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Laura Summers, Realty Specialist, at the above address or by phone at (208) 373–3866 or Jan Parmenter, Realty Specialist at BLM, Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, or by phone at (208) 524–7562.

SUPPLEMENTARY INFORMATION: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), Randy Lynne Jackson, personal representative of the estate of Donald F. Jackson, an adjacent landowner, has filed an application for a Disclaimer of Interest for lands described as follows: A parcel of land comprising 118.27 acres, more or less, in lots 1 and 2 of section 6, T. 4 S., R. 34 E., Boise Meridian, Bingham County, Idaho, more particularly described as follows:

Commencing at the northwest corner of said section 6; thence along the north line of said section 6, S89°16′44″ E 3507.82 feet to a point of intersection with the meander line surveyed in 1925 by H.G. Bardsley, Cadastral Engineer, during performance of the U.S.G.L.O. Dependent Resurvey of said Township 4 South, Range 34 East, Boise Meridian, said point is marked by a 1925 G.L.O. Brass Cap Monument as shown on the recorded and accepted Plat, the TRUE POINT OF BEGINNING; thence southwesterly along said 1925 meander line by the following courses (these courses are rotated to the basis of bearings stated above, and have been translated from chains to feet as requested by I.D.L.): thence S19°12′49″ W 133.32 feet; thence S30°25′16″ W 660.00 feet; thence S50°00′14″ W 517.37 feet; thence S51°56′03″ W 142.69 feet; thence S59°25′16″ W 297.00 feet; thence S86°25′16″ W 198.00 feet; thence N82°34′44″ W 198.00 feet; thence S54°25′16″ W 224.40 feet; thence S75°25′16″ W 330.00 feet; thence S88°25′16″ W 191.65 feet to a point of intersection with the westerly boundary of the land described in Quitclaim Deed instrument numbers 490751 and 490752, and depicted graphically on a Record of Survey on file in the Bingham County Courthouse, Blackfoot, Idaho; thence along said westerly boundary S00°42′23″ W 2154.37 feet to a point on the ordinary high water line of the right bank of the Snake River, said point marked by a 1/2''x24'' iron pin with red plastic cap marked PLS 9168; thence along said ordinary high water line S87°01′43″ E 252.50 feet; thence N74°48′08″ E 313.19 feet; thence N67°48′08″ E 243.19 feet; thence N63°21′08″ E 250.02 feet; thence N54°28′37″ E 363.79 feet; thence N41°51′36″ E 150.62 feet; thence N50°54′43″ E 611.67 feet; thence N28°19′06″ E 138.83 feet; thence N46°39′55″ E 336.07 feet; thence N32°16′59″ E 292.13 feet; thence N24°27′36″ E 188.15 feet; thence N19°03′54″ E 241.69 feet; thence N00°00′00″ E 79.90 feet; thence N13°00′02″ E 175.78 feet; thence N06°36′36″ E 357.80 feet; thence N06°27′46″ W 727.79 feet; thence N12°12′18″ W 271.35 feet to a point of intersection with the north line of said section 6; thence along said north line N74°52′56″ W 189.82 feet to the TRUE POINT OF BEGINNING.

Having relied on the report provided by experts of the Branch of Cadastral Survey and the findings therein, dated April 14, 2006, the following synopsis of key findings is provided in support of the application for disclaimer. The records for this area show an active flood plain adjoining the patented original government lots. Various channels have relicted and others expanded but there is no hard evidence of an avulsion resulting in ownership from the other side (south side) of today's river location. Because of the active channels, erratic survey record, and the economic considerations for omitted lands, as laid out in the Wackerli Decision (Burt A. Wackerli, 73 I.D. 280 (1966)), the Branch of Cadastral Survey has determined and shown this land as accretions attaching to patented lands to the north in the Dependent Resurvey, Corrective Dependent Resurvey, Subdivision, and Survey, T.4 S., R. 34 E., B.M., filed November 17, 2006, in the Public Room at the BLM State Office in Boise, Idaho. Therefore, it is the opinion of this office that the Federal Government has no interest in this 118.27 acre parcel.

Anyone who wishes to present comments or objections in connection with the pending application and proposed disclaimer may do so by writing to Tom Dyer, State Director, at the above address. Comments, including names and street addresses of commentors will be available for public review at the BLM-Idaho State Office (see address above), during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If no valid objection is received, a Disclaimer of Interest may be approved stating that the United States does not have a valid interest in these lands.

Jerry L. Taylor,

Chief, Branch of Lands, Minerals and Water Rights, Resource Services Division.

[FR Doc. E8–30484 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT91000–09–L10400000–PH0000–24–1A00]

Call for Nomination for Utah's Resource Advisory Council

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Call for Nomination for Utah's Resource Advisory Council.

SUMMARY: The purpose of this notice is to request public nominations to fill one position in Category Three, (Elected Official), for Utah's Resource Advisory Council. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils, which are consistent with the requirements of the Federal Advisory Committee Act (FACA). RACs are found at 43 CFR part 1784.

DATES: BLM will accept public nominations until February 5, 2009. Applicants are requested to submit a completed nomination form and nomination letters to the address listed below.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management's (BLM) Utah Resource Advisory Council is hosting a call for nominations for the position of Elected Official (representatives of state, county, or local elected office) on the advisory council. Upon appointment, the individual selected to this position will fill the seat until September 19, 2010, the remainder of this position's term. Individuals may nominate themselves or others. Nominees must be residents of Utah. BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision making.

The following must accompany nominations:

- Letters of reference from represented interest or organizations;
- A completed background information nomination form; and,
- Any other information that highlights the nominee's qualifications.

Jeff Rawson,

Acting State Director.

[FR Doc. E8–30354 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–07–5101–ER–F344; N–78091; 08–08807; TAS:14X5017]

Notice of Availability of the Record of Decision for the White Pine Energy Station Final Environmental Impact Statement, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) to authorize granting rights-of-way (ROWs) for the construction of the White Pine Energy Station and eventual disposal of the site, and for the construction and maintenance of ancillary facilities. All ROWs are located in the Egan Field Office management area in White Pine County, Nevada. The Ely District Manager has signed the ROD, which constitutes the final decision of the BLM.

DATES: The availability period for this decision will end January 21, 2009.

ADDRESSES: The ROD is available in printed copy or electronic file on compact disc on request from the BLM Manager, Egan Field Office, HC 33 Box 33500, Ely, NV 89301, or via the Internet at *http://www.blm.gov/nv/st/en/fo/ely_field_office*. Copies of the ROD are available for public inspection at the following locations:

— University of Nevada-Reno, Getchell Library, Government Publication Department, Reno, Nevada.
— Washoe County Library, 301 South Center Street, Reno, Nevada.
— White Pine County Library, 950 Campton Street, Ely, Nevada.
— Clark County Library, 1401 E. Flamingo Road, Las Vegas, Nevada.

A limited number of copies of the document will be available at the following BLM Nevada offices:

— Elko District Office, 3900 Idaho Street, Elko.
— Carson City District Office, 5665 Morgan Mill Road, Carson City.
— Ely District Office, 702 North Industrial Way, Ely.
— Nevada State Office, 1340 Financial Boulevard, Reno.
— Washington Office of Public Affairs, 18th and C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf, 775–289–1852.

SUPPLEMENTARY INFORMATION: Three alternatives were analyzed in the final EIS:

(1) Proposed action located 20 miles north of McGill, Nevada;

(2) Alternative plant location, 10 miles north of McGill, Nevada; and

(3) No action alternative, which would be to not authorize the ROW.

The BLM has selected the Proposed Action as its final decision in the ROD. The ROD will approve granting ROWs as described in the Proposed Action including: A coal-fired power plant site ROW and subsequent sale of the 1,281 acre power plant site to the proponent; transmission line alignment and substation ROWs; well field and water line ROWs; a railroad spur ROW; and access road ROWs. Various site-specific, applicant-committed mitigation measures will be implemented at the development stage to protect other resources and uses. Comments on the White Pine Energy Station Draft Environmental Impact Statement (EIS) received from the public and cooperating agencies were addressed in the Final EIS. The comments resulted in text modifications and the addition of new data used in the analysis of impacts in the Final EIS. The ROD for this project addresses only BLM's decisions for public lands and resources administered by BLM.

John F. Ruhs,

District Manager, Ely District Office.

[FR Doc. E8–30430 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT92000–09–L13200000–EL0000–24–1A00, UTU–86038]

Adequacy of the Environmental Assessment and Fair Market Value Public Meeting for the Miller Canyon Coal Tract, Emery County, UT

AGENCY: Bureau of Land Management.

ACTION: Notice of Public Meeting and Call for Public Comment on the Proposed Sale, Adequacy of the Environmental Assessment, Fair Market Value determination and Maximum Economic Recovery consideration for Coal Lease Application UTU–86038.

SUMMARY: The Bureau of Land Management (BLM) will hold a public meeting on January 21, 2009, at 7 p.m. at the Emery City Town Hall, 15 South Center, Emery, Utah, for the proposed competitive sale, of the Miller Canyon coal tract. BLM requests public comment on the fair market value and environmental effects of this tract. BLM is in the process of completing the

Environmental Assessment that will address the environmental effects of mining this tract. The lands included in the delineated Federal coal lease tract (''Miller Canyon'') are located in Emery County, Utah, approximately three miles south of Emery, Utah, on private lands with federally administered minerals and are described as follows:

T. 22 S., R. 6 E., SLM, Emery County, Utah
Sec. 23, S½SW¼;
Sec. 26, NW¼NW¼.

Approximately 120.00 acres.

Consolidated Coal Company submitted the application for the coal lease. The company plans to mine the coal as an extension from their existing Emery Mine, if the lease is obtained. The Miller Canyon coal tract has one minable coal bed; the I seam bed. The minable portions of the coal bed in this area are around ten feet in thickness. The tract contains more than 560,000 tons of recoverable high-volatile B bituminous coal. The I coal bed may be recoverable but further analysis will be required through the R2P2 review and approval process to make this determination. The coal quality in the I coal bed on an ''as received basis'' is as follows: 12,180 Btu/lb., 6.1 percent moisture, 8.4 percent ash, 38.9 percent volatile matter, 47.2 percent fixed carbon and 1.1 percent sulfur. The public is invited to the meeting to make public and/or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the Fair Market Value and the Maximum Economic Recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 3422 and 3425, the public meeting is being held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. The meeting is being advertised in the Emery County Progress located in Castle Dale, Utah. 43 CFR 3422 states that, no less than 30 days prior to the publication of the notice of the sale, the Secretary shall submit public comments on the Fair Market Value appraisal and the Maximum Economic Recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office, during the regular business hours (8 a.m.–4 p.m.) Monday through Friday. Comments on the Fair Market Value and Maximum Economic Recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information.

1. The quality of the coal resource;
2. The mining methods or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;
3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;
4. Whether the tract should be evaluated as part of a potential larger mining unit and revaluated as a portion of a new potential mine (*i.e.*, a tract which does not in itself form a logical mining unit);
5. Restrictions to mining that may affect coal recovery;
6. The price that the mined coal would bring when sold;
7. Costs, including mining and reclamation, of producing the coal and the time of production;
8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;
9. Depreciation, depletion, amortization and other tax accounting factors;
10. The value of any surface estate where held privately;
11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area;
12. Any comparable sales data of similar coal lands; and coal quantities and the Fair Market Value of the coal developed by BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

DATES: The public meeting is being held on Wednesday, January 21, 2009, at the Emery City Town Hall, address 15 South Center, starting at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Written comments on the Fair Market Value and Maximum Economic Recovery must be received by January 16, 2009, and should be addressed to Stan Perkes, 801–539–4036, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, P.O. Box 45155, Salt Lake City, Utah 84145 or E-mail to *Stan_Perkes@blm.gov*. Information on the Decision Notice/Finding of No Significant Impact can be obtained by contacting Mr. Steve Rigby, 435–636–3604.

Dated: December 15, 2008.

Selma Sierra,

State Director.

[FR Doc. E8–30385 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on January 15, 2009, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. until 4:30 p.m. Morning agenda items include: Review and approval of the September 18, 2008, meeting minutes for RAC and Recreation Resource Advisory Council (RRAC) business; BLM State Director's update on statewide issues; Update on Solar Energy Rights-of-Way Applications and Processing; Presentation on the Healthy Lands Initiative Projects in Arizona; RAC questions on BLM Field Managers' Rangeland Resource Team proposals; and reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on January 15, 2009, for any interested publics who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the RRAC, and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda

on January 15, will include review and discussion of the Recreation Enhancement Act (REA) Working Group Report, REA Work Group meeting schedule and future BLMJFS recreation fee proposals.

DATES: *Effective Date:* January 15, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

Elaine Y. Zielinski,

Arizona State Director.

[FR Doc. E8–30266 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 20, 2008 from 9 a.m. to 3 p.m.

ADDRESSES: BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Cass Cairns, (719) 269–8553.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on the following land management issues; Park Center Well, Over the River proposal, Elevenmile Canyon Allotment Renewal (Bison grazing permit), and the RAC meeting schedule for 2009.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *www.blm.gov/rac/co/frrac/co_fr.htm*.

Dated: December 16, 2008.

Linda McGlothlen,

Associate Field Manager, Royal Gorge Field Office.

[FR Doc. E8–30418 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000–DB0000–LXSINSSI0000–LLAK910000]

Notice of Public Meeting, North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) will meet in January 2009.

DATES: On Wednesday, January 28, 2009, the meeting will begin at 9 a.m. at the National Park Service Office, 4175 Geist Road, Fairbanks, Alaska. On Thursday, January 29, 2009, the meeting will begin at 9 a.m. at the same location, and public comment will be heard from 3 to 4 p.m. On Friday, January 30, 2009, the meeting will begin at 9 a.m. at the location above.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Ph.D., Executive Director, North Slope Science Initiative (AK–910), c/o Bureau of Land Management, 222 W. 7th Avenue, #13;, Anchorage, Alaska 99513; phone 907–271–3131 or e-mail *john_f_payne@blm.gov*.

SUPPLEMENTARY INFORMATION: The STAP provides advice and recommendations to the North Slope Science Initiative Oversight Group on research and information priority needs across the North Slope of Alaska. These needs may include recommendations on inventory, monitoring and research activities that contribute to informed land management decisions. Discussion topics include:

- Report by STAP Chair on panel activities
- Continue identifying and defining future research challenges
- Coordinate with senior NSSI agency staff on emerging issues
- Subcommittee reports
- Other topics the STAP may raise

The meeting is open to the public and the public comment period is 3 to 4 p.m., January 29, 2009. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public may present written comments to the STAP through the Executive Director, North Slope Science Initiative. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

Dated: December 16, 2008.

Thomas P. Lonnie,

Alaska State Director.

[FR Doc. E8–30349 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 6, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic

Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 6, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Cochise County

Fry Pioneer Cemetery, Between 6th and 7th Sts., a half block N. of Fry Blvd., Sierra Vista, 08001312

Maricopa County

Bragg's Pies Building, 1301 Grand Ave., Phoenix, 08001313

CALIFORNIA

Tuolumne County

Cooper Cabin, Address Restricted, Emigrant Wilderness, 08001314

Stanislaus Branch, California Forest and Range Experiment Station, Forest Rd. 4N13B, Strawberry, 08001315

COLORADO

El Paso County

Chadbourn Spanish Gospel Mission, 402 S. Conejos St., Colorado Springs, 08001316

Montezuma County

Montezuma Valley National Bank and Store Building, 2–8 Main St., Cortez, 08001317

FLORIDA

Miami-Dade County

Fontainebleau Hotel, 4441 Collins Ave., Miami Beach, 08001318

GEORGIA

Cook County

United States Post Office—Adel, Georgia, 115 E. 4th St., Adel, 08001319

Jefferson County

Bartow Historic District, Roughly centered along U.S. Hwy. 221, U.S. Hwy. 319 and the CSX rail line, Bartow, 08001320

Troup County

Jones, R.M., General Store, 6926 Whitesville Rd., LaGrange, 08001321

MISSOURI

Greene County

St. Paul Block (Springfield, Missouri MPS AD), 401 S. Ave., Springfield, 08001322

Pemiscot County

Delmo Community Center, 1 Delmo St., Homestown, 08001323

MONTANA

Custer County

Holy Rosary Hospital, 310 N. Jordan and 2007 Clark St., Miles City, 08001324

Lake County

Olsson, Don E., House and Garage, 503 4th Ave., SW., Ronan, 08001325

PENNSYLVANIA

York County

Leibhart, Byrd, Site, Address Restricted, Long Level, 08001326

WISCONSIN

Ashland County

BIG BAY SLOOP shipwreck (sloop), (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, La Pointe, 08001327

Columbia County

Bacon, Clara F., House, 509 Madison Ave., Lodi, 08001328

Lewis, Frank T. and Polly, House, 509 N. Main St., Lodi, 08001329

Manitowoc County

CONTINENTAL shipwreck (bulk carrier), (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, Two Rivers, 08001330

Milwaukee County

LUMBERMAN shipwreck (schooner), (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, Oak Creek, 08001331

In the interest of preservation the comment period for the following resource has been waived.

FLORIDA

Miami-Dade County

Fontainebleau Hotel, 4441 Collins Ave., Miami Beach, 08001318

Request for a boundary decrease has been made for the following resource:

FLORIDA

Leon County

Smoky Hollow Historic District, Roughly bounded by E. Lafayette St., CSX railroad tracks, Myers Park and Myers Park Ln., Tallahassee, 00001199

[FR Doc. E8–30323 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to appraise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from November 9 to November 14, 2008.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: December 15, 2008.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, NHL, Action, Date, Multiple Name

ARKANSAS

Cross County

New Hope School, 3762 Hwy. 284, Wynne vicinity, 08001037, Listed, 11/12/08.

Pulaski County

East End Methodist Episcopal Church, 2401 E. Washington Ave., North Little Rock, 08001038, Listed, 11/12/08.

CALIFORNIA

Los Angeles County

Pasadena Arroyo Parks and Recreation District, Roughly bounded by the Foothill Freeway on the north, the city limits on the south, Arroyo Blvd on east, San Rafael, Pasadena, 08000579, Listed, 11/10/08.

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Bulletin Building, 717 6th St., NW., Washington, 07000422, Listed, 11/12/08.

Petworth Gardens, 124, 126, 128, and 130 Webster St., NW., Washington DC, 08001029, Listed, 11/10/08. (Apartment Buildings in Washington, DC, MPS).

FLORIDA

Dade County

Normandy Isles Historic District, Roughly by Normandy Shores Golf Course, Indian Creek, Biscayne Bay, Rue Versailles, 71st., Rue Notre Dame, Miami Beach, 08001041, Listed, 11/12/08. (North Beach Community (1919–1963), MPS).

Martin County

Cypress Lodge, 18681 SW. Conners Hwy., Port Mayaca, 08001040, Listed, 11/12/08.

IOWA

Hancock County

Avery Theater, the, 495 State St., Garner, 08001043, Listed, 11/12/08.

MARYLAND

Worcester County

Makemie Memorial Presbyterian Church, 103 Market St., Snow Hill, 08001044, Listed, 11/10/08.

MISSISSIPPI

Leflore County

Greenwood Underpass, Main St. Between Jackson St. and W. Taft St., Greenwood, 08001045, Determined Eligible, 11/12/08.

Madison County

Young House, 3463 N. Liberty St., Canton, 08001046, Listed, 11/10/08.

NEW HAMPSHIRE

Merrimack County

Old North Cemetery, North State St., Concord, 08001031, Listed, 11/09/08.

NEW YORK

Greene County

Tannersville Main Street Historic District, 5898–6144 Main St., 10 Spring St., Tannersville, 08001047, Listed, 11/14/08.

New York County

General Society of Mechanics and Tradesmen, 20 w. 44th St., New York, 08001048, Listed, 11/12/08.

OREGON

Linn County

Albany Monteith Historic District (Boundary Increase), Elm St. SW to Calapooia and 19th Ave. SW to 11th and 12th aves. SW., Albany, 08001017, Listed, 11/13/08.

TENNESSEE

Bledsoe County

Bledsoe County Jail, 128 Frazier St., Pikeville, 08001049, Listed, 11/12/08.

VIRGINIA

Charlotte County

Keysville Railroad Station, Railroad Ave., Keysville, 08001050, Listed, 11/12/08.

Fauquier County

Cromwell's Run Rural Historic District (Boundary Increase), Bounded by Fauquier County Line on the N., Existing Cromwell's Run Rural Historic District on the E., Atoka Vicinity, 08001051, Listed, 11/12/08.

Fredericksburg Independent City

Rowe House, 801 Hanover St., Fredericksburg Vicinity, 08001052, Listed, 11/12/08.

Galax Independent City

Galax Commercial Historic District (Boundary Increase), 107 West Oldtown St., Galax, 08001053, Listed, 11/12/08.

Lynchburg Independent City

Kemper Street Industrial Historic District, 1300–1500 (Odd) Kemper St., 1200–1300 (Even) Campbell Ave., Lynchburg, 08001054, Listed, 11/14/08.

Prince William County

Camp French, Address Restricted, Marine Corps Base, Quantico, 08001055, Listed, 11/12/08. (Campaigns for the Control of Navigation on the Lower Potomac River, 1861–1862, Virginia, Maryland, and DC, MPS).

Prince William County

Rising Hill Camp, Address Restricted, Marine Corps Base, Quantico Vicinity, 08001057, Listed, 11/12/08. (Campaigns for the Control of Navigation on the Lower Potomac River, 1861–1862, Virginia, Maryland, and DC, MPS).

Southampton County

Beaton-Powell House, 32142 South Main St., Boykins, 08001058, Listed, 11/14/08.

Stafford County

Tennessee Camp, Address Restricted, Marine Corps Base, Quantico Vicinity, 08001059, Listed, 11/12/08. (Campaigns for the Control of Navigation on the Lower Potomac River, 1861–1862, Virginia, Maryland, and DC, MPS).

WISCONSIN

Wood County

Roddis, Hamilton and Catherine, House, 1108 E. 4th St., Marshfield, 08001060, Listed, 11/12/08.

WYOMING

Weston County

Toomey's Mills, 500 W. Main St., Newcastle, 08001062, Listed, 11/13/08.

[FR Doc. E8–30316 Filed 12–19–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–632]

In the Matter of Certain Refrigerators and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting in Part and Denying in Part Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 15) granting in part and denying in part complainant's motion for leave to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 21, 2008, the Commission instituted this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool Corporation of Benton Harbor, Michigan, and Maytag Corporation of Benton Harbor, Michigan (collectively, ''Whirlpool''). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130; 6,810,680 (''the '680 patent''); 6,915,644 (''the '644 patent''); 6,971,730; and 7,240,980. Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, ''LG'') as respondents. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the '680 patent and the '644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the '680 and '644 patents. The ALJ found no indication that termination of the investigations on the basis of the settlement agreement would adversely affect the public interest, and that the procedural requirements for terminating the investigation, in part, had been met. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On October 29, 2008, the Commission investigative attorney supported Whirlpool's motion, and LG indicated that it would not oppose the motion. On November 20, 2008, the ALJ issued the subject ID, Order No. 14,

granting complainant's motion for summary determination of importation. No petitions for review were filed. On December 15, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. LG indicated that it opposed Whirlpool's motion to amend on August 4, 2008. The Commission Investigative attorney did not oppose Whirlpool's proposed amendments. On August 11, Whirlpool filed a motion seeking leave to file a reply in support of its motion to amend, which was opposed by LG on August 15, 2008. On November 25, 2008, the ALJ issued Order No. 15, in which he granted Whirlpool's motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed.

The Commission has determined not to review the subject ID. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 15, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–30341 Filed 12–19–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on December 15, 2008, a proposed Consent Decree in *United States* v. *Ascension Holding Company, LLC, et al.* Civil Action No. 3:08–cv–00815–JVP–SCR, was lodged with the United States District Court for the Middle District of Louisiana.

In this action, the United States sought injunctive relief and response costs under the Comprehensive Environmental Response, Compensation, and Liability Act, Sections 106 and 107(a), 42 U.S.C. 9606 and 9607, in connection with the release or threatened release of hazardous substances from the Dutchtown Oil Treatment Facility Superfund Site located in Dutchtown, Ascension Parish, Louisiana. The proposed Consent Decree would require settling defendants to reimburse the United States for $935,000 in past and future clean up costs at this Site, and would otherwise resolve their liability for allegations set forth in the underlying Complaint.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States* v. *Ascension Holding, LLC,* D.J. Ref. # 90–11–2–428/1.

The proposed Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) for a copy exclusive of signature pages and appendices, or $4.50 (25 cents per page reproduction cost) for a copy including signature pages and appendices payable to the ''U.S. Treasury'' or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E8–30306 Filed 12–19–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 10, 2008, a proposed Consent Decree in the case of *United States* v. *Simon Wrecking Co.,* Inc., *et al.*, Docket No. 06–928, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this proceeding, the United States filed a claim pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for reimbursement of costs incurred in connection with response actions taken at the Malvern TCE Superfund Site in Chester County, Pennsylvania. Pursuant to the Consent Decree, the Defendant agrees to pay $550,000 in reimbursement of costs previously incurred by the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *U.S.* v. *Simon Wrecking Co., Inc.,* DJ. Ref. 90–11–3–1731/8.

The Consent Decree may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029, c/o Joan A. Johnson, Esq. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–30304 Filed 12–19–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 16, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number) /e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

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

Agency: Employment Training Administration.

Type of Review: Revision of an existing OMB Control Number.

Title of Collection: Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade Act of 2002.

OMB Control Number: 1205–0342.

Agency Form Numbers: ETA 9042a, ETA 9042a–1 (Spanish), ETA 9043a, ETA 9118, and ETA 8562a.

Affected Public: Private Sector—Business or other for-profits and Not-for-profit Institutions, Individuals or Households, and State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 12,320.

Total Estimated Annual Burden Hours: 24,281.

Total Estimated Annual Costs Burden: $0.

Description: Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. The Form ETA 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, and its Spanish translation, Form 9042a–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for filing such petitions. The Department's regulations regarding petitions for worker adjustment assistance may be found at 29 CFR 90. The Forms ETA 9043a, Business Confidential Data Request, ETA 8562a, Business Confidential Customer Survey and ETA 9118, Business Confidential Non-Production Questionnaire are undertaken in accordance with Sections 222, 223 and 249 of the Trade Act of 1974, as amended by the Trade Act of 2002, are used by the Secretary of Labor to certify groups of workers as eligible to apply for worker trade adjustment assistance. For additional information, see related notice published at Volume 73 FR 39724 on July 10, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–30263 Filed 12–19–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–098)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Friday, January 9, 2009, 8 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 5H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Background to Mars Science Laboratory Launch Delay
—Cost Implications of Mars Science Laboratory Launch Delay
—Options for Addressing Cost Impacts of Mars Science Laboratory Launch Delay
—Public Comment Period. Speakers Must Register on the Day of the Meeting Before the Start of the Meeting

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 7 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at mnorris@nasa.gov or by telephone at (202) 358–4452.

Dated: December 16, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–30334 Filed 12–19–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 21, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001 E-mail: *request.schedule@nara.gov.* FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers and Stockyard Administration (N1–545–08–19, 1 item, 1 temporary item). Records relating to the use of Government-issued travel cards. The proposed disposition instructions are limited to paper records.

2. Department of Defense, Office of the Secretary of Defense (N1–330–08–11, 2 items, 1 temporary item). Paper copies of records of the Under Secretary of Defense for Intelligence accumulated between 2001 and 2006. Proposed for permanent retention is an electronic version of these files.

3. Department of Defense, Defense Commissary Agency (N1–506–07–5, 29 items, 29 temporary items). Records relating to commissary operations including purchase, processing and distribution. Included are records related to property, access, receipting, accountability, maintenance, reporting, daily operations, stores, promotions, quality assurance, and similar operational functions.

4. Department of Defense, Defense Logistics Agency (N1–361–09–1, 1 item, 1 temporary item). Security video recordings used to monitor activities in agency child and youth programs.

5. Department of Defense, Joint Staff (N1–218–09–1, 2 items, 2 temporary items). Master files and reports associated with an electronic system that tracks information on agency witnesses appearing before congressional committees.

6. Department of Health and Human Services, Food and Drug Administration (N1–88–04–2, 11 items, 7 temporary items). Legislative and regulatory records, including congressional correspondence relating to constituent requests; congressional hearing background files; legislation and hearing reference files; Federal Register notice files; and non-substantial administrative and rulemaking dockets and associated

tracking data. Proposed for permanent retention are congressional correspondence not related to constituent requests, evidentiary hearing materials, and substantial administrative and rulemaking dockets and associated tracking data. The proposed disposition instructions for the tracking data are limited to electronic records.

7. Department of Homeland Security, Counterintelligence and Investigations Division (N1–563–08–4, 3 items, 3 temporary items). Case files for investigations into potential espionage within the agency or crimes against the agency's property or personnel and files relating to information or allegations that do not relate to specific investigations.

8. Department of the Interior, National Park Service (N1–79–08–1, 6 items, 3 temporary items). Resource management and land records that do not meet the criteria for permanent retention specified in the schedule. Proposed for permanent retention are records relating to significant policies and procedures, and those documenting land and resource acquisition and use, environmental concerns and water rights, archaeological matters, historic sites and structures, plant and animal life, and geological features.

9. Department of Justice, Office of the Federal Detention Trustee (N1–60–09–2, 5 items, 5 temporary items). Master files for electronic information systems used to automate the process of designating prisoners to appropriate correctional facilities. Systems include data for locating and inspecting facility space, designating prisoners, and establishing intergovernmental agreements for Federal usage of non-Federal facilities.

10. Department of the Navy, Naval Criminal Investigative Service (N1–NU–08–3, 5 items, 5 temporary items). Reports, briefings, bulletins, analyses, summaries and similar products relating to possible security threats not rising to the level of counterintelligence assessments.

11. Department of the Navy, Naval Criminal Investigative Service (N1–NU–08–4, 2 items, 2 temporary items). Applications, responses, investigations, reports, correspondence, and other records related to personnel inquiries and non-criminal investigations.

12. Department of the Navy, U.S. Marine Corps (N1–127–08–2, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning facilities, including readiness, quality, and cost estimates for improvements and maintenance.

13. Department of the Navy, U.S. Marine Corps (N1–127–08–5, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning operational costs for facilities.

14. Department of the Treasury, Departmental Offices (N1–56–09–1, 1 item, 1 temporary item). Master files for an electronic information system that is used to manage payments of certain Federal and District of Columbia retirement benefits.

15. Nuclear Regulatory Commission, Agency-wide (N1–431–08–16, 2 items, 2 temporary items). Master files maintaining interim or supplemental documentation relating to agency electronic information systems.

16. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research (N1–431–08–13, 2 items, 2 temporary items). Master files and outputs for the Research Information Management System, which tracks procurement activities and deliverables.

Dated: December 17, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–30427 Filed 12–19–08; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc.; Notice of Availability of the Final Supplement 34 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Vogtle Electric Generating Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' (NUREG–1437 regarding the renewal of operating licenses NPF–068 and NPF–081 for an additional 20 years of operation for the Vogtle Electric Generating Plant, Units 1 and 2 (VEGP). VEGP is located in Burke County, Georgia, approximately 15 miles east-northeast of Waynesboro, GA, and 26 miles southeast of Augusta, GA. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 34, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Southern Nuclear Operating Company, Inc.; (3) consultation with federal, state, and local agencies; (4) the NRC staff's own independent review; and (5) the NRC staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for VEGP are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 34 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the final Supplement 34 to the GEIS is ML083380325. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.@nrc.gov.* In addition, the Burke County Library, located at 130 Highway 24 South, Waynesboro, GA 30830, has agreed to make the final Supplement 34 to the GEIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Hernandez, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, D.C. 20555–0001. Mr. Hernandez may be contacted by telephone at 1–800–368–5642, extension 4049 or via e-mail at *samuel.hernandez@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of December, 2008.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–30350 Filed 12–19–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Expiring Information Collection: OMB Control No. 3206–0106; Form INV 10, ''Mail Reinterview Form''

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces that the U.S. Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for re-clearance of an expiring information collection, Mail Reinterview Form (INV 10), OMB Control No. 3206–0106. OPM sends the INV 10 questionnaire to a random sampling of record and personal sources contacted during background investigations when investigators have performed fieldwork. The INV 10 is used as a quality control instrument designed to ensure the accuracy and integrity of the investigative product, as it inquires of the sources about the investigative procedure employed by the investigator, the investigator's professionalism, and the information discussed and reported.

It is estimated that 114,000 INV 10 forms are sent to individual sources annually. Of those, it is estimated that 50,000 individuals respond. We anticipate sending and receiving a similar number of INV 10 forms in the years ahead. Each form takes approximately six minutes to complete. The estimated annual burden is 5,000 hours.

We received no comments as a result of the 60-day **Federal Register** Notice, published in the **Federal Register** on June 19, 2008. Therefore, we determined that this collection of information continues to be necessary for the proper performance of functions of the U.S. Office of Personnel Management and its Federal Investigative Services Division, which administers its background investigations. Further, we maintain that our estimate of the public burden of this collection is accurate, based on valid assumptions and methodology. The existing reinterview questionnaire addresses all of the questions relevant to ensure the accuracy and integrity of the investigative product at this time.

For copies of this proposal, contact Mary-Kay Brewer on (703) 305–1002, Fax (703) 603–0576 or e-mail to *MaryKay.Brewer@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Kathy Dillaman, Associate Director, Federal Investigative Services Division, U.S. Office of Personnel Management, 1900 E. Street, NW., Room 5416, Washington, DC 20415, and

John W. Barkhamer, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary-Kay Brewer, Program Analyst, Operational Policy Group, Federal Investigative Services Division, U.S. Office of Personnel Management, (703) 305–1002.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–30296 Filed 12–19–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0199]

Submission for OMB Review; Comment Request for Reinstatement of an Expired Information Collection: Nonforeign Area Cost-of-Living Allowance Price and Background Surveys

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reinstatement of the Nonforeign Area Cost-of-Living Allowance Price and Background Surveys (OMB Control No. 3206–0199), a previously-cleared information collection that was recently discontinued at OPM's discretion and for which the OMB clearance has expired. OPM uses price surveys and background surveys to gather data to be used in determining nonforeign area cost-of-living allowances (COLAs) paid to certain Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. OPM conducts price surveys in the Washington, DC, area on an annual basis and once every 3 years in each allowance area on a rotating basis. Prior to these surveys, OPM conducts background surveys that are similar to the price surveys, but much more limited in scope. OPM uses the results of the background surveys to prepare for the price surveys.

The COLA Price Survey is necessary for collecting living-cost data used to determine COLAs. OPM uses the Price Survey results to compare prices in the allowance areas with prices in the Washington, DC, area and to derive COLA rates where local living costs significantly exceed those in the DC area. The COLA Background Survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the Background Survey results to identify items to be priced and the outlets at which OPM will price the items in the Price Surveys.

OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. OPM will contact approximately 2,000 establishments in each annual Price Survey and approximately 100 establishments in each annual Background Survey. Participation in the surveys is voluntary.

OPM estimates that the average price survey interview will take approximately 6 minutes, for a total burden of 200 hours. The average background survey interview will take approximately 6.5 minutes, for a total burden of 11 hours.

For copies of or further information on this proposal, contact J. Stanley Austin by telephone at (202) 606–2838, by fax at (202) 606–4264, or by e-mail at *COLA@opm.gov.* If you are requesting a copy of this proposal, please include your mailing address with your request.

DATES: Submit comments on or before *January 21, 2009.*

ADDRESSES: Send or deliver comments to:

Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; fax: (202) 606–4264; or e-mail: *COLA@opm.gov;* and

John W. Barkhamer, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th

Street, NW., Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request an extension of the price and background surveys in the **Federal Register** on May 2, 2008 (73 FR 24321). OPM did not receive any comments in response to the notice.

Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–30287 Filed 12–19–08; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Request for Internet Services, OMB 3220–0198.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB Internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB Internet-based services. The RRB estimates that approximately 9,756 requests for PRC's and PIN/Passwords are received annually and that it takes 5 minutes per response to secure a PRC and 1.5 minutes to establish a PIN/Password. Completion is voluntary, however, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed. The RRB proposes no changes to the PRC and PIN/Password screens.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an E-mail request to *Charles.Mierzwa@RRB.gov.* Comments regarding the information collection should be sent to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@RRB.GOV.* Comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–30275 Filed 12–19–08; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. Application and Claim for RUIA Benefits Unpaid at Death; OMB 3220–0055

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63, Application for Benefits Due but Unpaid at Death, for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion time for Form UI–63 is estimated at 7 minutes. Completion is required to obtain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 51535 & 51536 on September 3, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application and Claim for RUIA Benefits Due at Death.

Form(s) submitted: UI–63.

OMB Control Number: 3220–0055.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated annual number of respondents: 200.

Total annual responses: 200.

Total annual reporting hours: 23.

Abstract: The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of the employee.

Changes Proposed: Non-burden impacting editorial changes to Form UI–63 are proposed.

2. Continuing Disability Report; OMB 3220–0187.

Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the annuitant works for a railroad or earns more than prescribed dollar amounts from either non-railroad

employment or self-employment. Certain types of work may indicate an annuitant's recovery from disability. The provisions relating to the reduction or non-payment of annuities by reasons of work and an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220.20. The RRB conducts continuing disability reviews (CDR) to determine whether annuitants continue to meet the disability requirements of the law. Provisions relating to when and how often the RRB conducts CDRs are prescribed in 20 CFR 220.186.

Form G–254, Continuing Disability Report, is used by the RRB to develop information for CDR determinations, including determinations prompted by a report of work, return to railroad service, allegations of medical improvement, or routine disability call-up. Completion is required to obtain or retain benefits. Completion time is estimated at 5 to 35 minutes.

Form G–254a, Continuing Disability Update Report, is used to help identify disability annuitants whose work activity and/or recent medical history warrants a more extensive review and thus completion of Form G–254. Completion is required to obtain or retain benefits. Completion time is estimated at 5 minutes per response.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 53909 & 53910 on September 17, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Continuing Disability Report.

Form(s) submitted: G–254, G–254a.

OMB Control Number: 3220–0187.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or Households, Business or other for-profit.

Estimated annual number of respondents: 1,500.

Total annual responses: 3,000.

Total annual reporting hours: 748.

Abstract: Under the Railroad Retirement Act, a disability annuity can be reduced or not paid, depending on the amount of earnings and type of work performed. The collection obtains information about a disabled annuitant's employment and earnings.

Changes Proposed: The RRB proposes revision to Form G–254 to modify an existing item in order to clarify information regarding the circumstances surrounding a disabled annuitant's self-employment. The RRB proposes no changes to Form G–254a.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–30313 Filed 12–19–08; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three (3) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007

Under Section 7 (b)(3) of the Railroad Retirement Act (RRA), and section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20 CFR part 260 and 20 CFR part 320. The notification letter sent to the individual at the time of the original action on the application informs the applicant of such right.

When an individual protests a decision, the concerned bureau reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The procedure pertaining to the filing of such an appeal is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to furnish the basis for the appeal and what additional evidence, if any, is to be submitted. Completion is voluntary, however if the information is not provided the RRB cannot process the appeal.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 52432 & 52433 on September 9, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act.

Form(s) submitted: HA–1.

OMB Control Number: 3220–0007.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated annual number of respondents: 650.

Total annual responses: 650.

Total annual reporting hours: 217.

Abstract: Under Section 7(b)(3) of the Railroad Retirement Act and Section 5 (c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action. One response is requested of each respondent.

Changes Proposed: The RRB proposes to remove items from Form HA–1 that requests the appellant to provide their social security number. No other changes are proposed. Completion is required to obtain or retain benefits.

2. Annual Earnings Questionnaire; OMB 3220–0179

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement which was performed whether at the same time of, or after an annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities because of Last Pre-Retirement Non-Railroad Employment Earnings (LPE) are in order.

The RRB utilizes Form G–19L to obtain LPE earnings information from annuitants. Companion Form G–19L.1, which serves as an instruction sheet and contains the Paperwork Reduction/ Privacy Act Notice for the collection accompanies each Form G–19L sent to an annuitant. One response is requested of each respondent. Completion is required to retain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 54643 & 54644 on September 22, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-railroad Employment.

Form(s) submitted: G–19L.

OMB Control Number: 3220–0179.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated annual number of respondents: 300.

Total annual responses: 300.

Total annual reporting hours: 75.

Abstract: Under Section 2(e)(3) of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the beneficiary works for a railroad or earns more than the prescribed amounts. The collection obtains earnings information needed by the Railroad Retirement Board to determine possible reductions in annuities because of earnings.

Changes Proposed: The RRB proposes the addition of a subitem requesting that an annuitant provide an Employer's Identification Number (EIN). Non-burden impacting editorial and reformatting changes are also proposed.

3. Railroad Unemployment Insurance Act Applications; OMB 3220–0039

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under Section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is Section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR Part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit and ID–11b, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 54643 on September 22, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Unemployment Insurance Act Applications.

Form(s) submitted: SI–1a, SI–1b, SI–3, SI–7, SI–8, ID–7H, ID–11A, ID–11b.

OMB Control Number: 3220–0039.

Expiration date of current OMB clearance: 12/31/2008.

Type of request: Revision of a currently approved collection.

Affected Public: Individuals or households, Private Sector.

Estimated annual number of respondents: 44,600.

Total annual responses: 213,900.

Total annual reporting hours: 21,884.

Abstract: Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. The collection obtains information from railroad employees and physicians needed to determine eligibility to and the amount of such benefits.

Changes Proposed: Consistent with requirements of the Health Insurance Portability and Accountability Act (HIPAA), the RRB proposes revisions to Form SI–1b, SI–7, and SI–8 to replace the term ''Tax Identification Number'' with ''National Provider Identifier''. No other changes are proposed.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–30314 Filed 12–19–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59101; File No. 4–575]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Boston Stock Exchange, Incorporated

December 15, 2008.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on December 8, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') and the Boston Stock Exchange, Incorporated (''BX'') (together with FINRA, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a plan for the allocation of regulatory responsibilities, dated December 5, 2008 (''17d–2 Plan'' or the ''Plan''). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

On August 29, 2008, BX was acquired by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). At the time of this acquisition, BX was not operating a venue for trading cash equities. BX has since proposed to adopt a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equity trading.[10] The proposed new BX rules, in particular the member conduct rules that would be the Common Rules under the proposed Plan, are based to a substantial extent on the rules of the NASDAQ Stock Market LLC (''NASDAQ Exchange''),[11] which, in turn, are based to a substantial extent on the comparable rules of FINRA. The NASDAQ Exchange currently is party to a 17d–2 plan with FINRA.[12] The proposed Plan would allocate regulatory responsibility between BX and FINRA in a manner similar to the allocation of regulatory responsibility that currently exists between the NASDAQ Exchange and FINRA.

Accordingly, the proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both FINRA and BX.[13] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''Rules Certification for 17d–2 Agreement with FINFA,'' referred to herein as the ''Certification'') that lists every BX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to BX members that are also members of FINRA and the associated persons therewith (''Dual Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BX that are substantially similar

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[10] *See* Securities Exchange Act Release No. 58927 (November 10, 2008), 73 FR 69685 (November 19, 2008) (SR–BSE–2008–48) (notice of proposed rule change).

[11] *See id.* at 73 FR 69686.

[12] *See* Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4–517) (order approving and declaring effective the plan between the NASDAQ Exchange and NASD (n/k/a FINRA)).

[13] The proposed 17d–2 Plan refers to these common members as ''Dual Members.'' *See* Paragraph 1(c) of the proposed 17d–2 Plan.

to the applicable rules of FINRA, as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules'').[14] Common Rules would not include the application of any BX rule or FINRA rule, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.[15] In the event that a Dual Member is the subject of an investigation relating to a transaction on BX, the plan acknowledges that BX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[16]

Under the Plan, BX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving BX's own marketplace; registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties and obligations as a DEA pursuant to Rule 17d–1 under the Act; and any BX rules that are not Common Rules.[17]

The text of the proposed 17d–2 Plan is as follows:

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND BOSTON STOCK EXCHANGE, INCORPORATED PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (''FINRA'') and Boston Stock Exchange, Incorporated (''BX''), is made this 5th day of December, 2008 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BX may be referred to individually as a ''party'' and together as the ''parties.''

Whereas, FINRA and BX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and BX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and BX hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*BX Rules*'' or ''*FINRA Rules*'' shall mean: (i) The rules of BX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean BX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, BX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. approved by the Commission on October 17, 2008.

(c) ''*Dual Members*'' shall mean those BX members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 14.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the NASD Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, BX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BX Rules are substantially similar to the corresponding FINRA Rules (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BX or FINRA, BX shall submit an updated list of Common Rules to FINRA for review which shall add BX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities''

[14] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either BX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that BX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[15] *See* Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4–566) (notice of filing and order approving and declaring effective the plan). The Certification identifies two Common Rules that may also be addressed in the context of regulating insider trading activities pursuant to the separate multiparty agreement.

[16] *See* paragraph 6 of the proposed 17d–2 Plan.

[17] *See* paragraph 2 of the proposed 17d–2 Plan.

does not include, and BX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the ''Retained Responsibilities'') the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BX's own marketplace;

(b) Registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) Discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) Any BX Rules that are not Common Rules.

3. *Dual Members.* Prior to the Effective Date, BX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to BX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that FINRA becomes aware of apparent violations of any BX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BX of those apparent violations for such response as BX deems appropriate. In the event that BX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, BX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings. Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BX, BX may in its discretion assume concurrent jurisdiction and responsibility.

7. *Continued Assistance.*

(a) FINRA shall make available to BX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BX any information it obtains about Dual Members which reflects adversely on their financial condition. BX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. *Dual Member Applications.*

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both BX and FINRA or associated with Dual Members thereof. Upon request, FINRA shall advise BX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both BX and FINRA.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BX advised of its actions in this regard for such subsequent proceedings as BX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination meets the BX requirements for general membership or for specified categories of membership or participation in BX, such as Equities Market Maker, Equities ECN, Order Entry Firm, or any similar type of BX membership or participation that is created after this Agreement is executed. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of BX, or a person associated with, or requesting association with, a member or participant of BX.

9. *Branch Office Information.* FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise BX of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.* BX shall forward to FINRA copies of all customer complaints involving Dual Members received by BX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. *Advertising.* FINRA shall assume responsibility to review the advertising

of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

12. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

13. *Termination.* This Agreement may be terminated by BX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

14. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

15. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, BX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 15 shall interfere with a party's right to terminate this Agreement as set forth herein.

16. *Notification of Members.* BX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. *Limitation of Liability.* Neither FINRA nor BX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BX with respect to any of the responsibilities to be performed by each of them hereunder.

19. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and BX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

20. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

Boston Stock Exchange, Incorporated

By: _____

Name:

Title:

Financial Industry Regulatory Authority, Inc.

By: _____

Name:

Title:

Exhibit 1

Boston Stock Exchange, Incorporated (''BX'') hereby certifies that the requirements contained in the BX rules listed below are identical to, or substantially similar to, the NASD and FINRA rules noted below:

RULES CERTIFICATION FOR 17d–2 AGREEMENT WITH FINRA

BX Rule	FINRA (or NASD) Rule
IM–1002–2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces.	NASD IM–1000–2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces.
IM–1002–3. Failure to Register Personnel	NASD IM–1000–3. Failure to Register Personnel.
IM–1002–4. Branch Offices and Offices of Supervisory Jurisdiction	NASD IM–1000–4. Branch Offices and Offices of Supervisory Jurisdiction.
1011. Definitions	NASD Rule 1011. Definitions.
1012. General Provisions (provisions relating to Rule 1017 and registration of branch offices only)..	NASD Rule 1012. General Provisions (provisions relating to Rule 1017 and registration of branch offices only).
1014. Department Decision (provisions relating to Rule 1017 only).	NASD Rule 1014. Department Decision (provisions relating to Rule 1017 only).
1017. Application for Approval of Change in Ownership, Control, or Business Operations..	NASD Rule 1017. Application for Approval of Change in Ownership, Control, or Business Operations.
1021. Registration Requirements	NASD Rule 1021. Registration Requirements.
1022. Categories of Principal Registration	NASD Rule 1022. Categories of Principal Registration.
IM–1022–2. Limited Principal—General Securities Sales Supervisor.	NASD IM–1022–2. Limited Principal—General Securities Sales Supervisor.
1031. Registration Requirements	NASD Rule 1031. Registration Requirements.
1032. Categories of Representative Registration	NASD Rule 1032. Categories of Representative Registration.
1050. Research Analysts	NASD Rule 1050. Research Analysts.
1060. Persons Exempt from Registration	NASD Rule 1060. Persons Exempt from Registration.

RULES CERTIFICATION FOR 17d–2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
1070. Qualification Examinations and Waiver of Requirements	NASD Rule 1070. Qualification Examinations and Waiver of Requirements.
1080. Confidentiality of Examinations	NASD Rule 1080. Confidentiality of Examinations.
1090. Foreign Members	NASD Rule 1090. Foreign Members.
1120. Continuing Education Requirements	NASD Rule 1120. Continuing Education Requirements.
1140. Electronic Filing Rules	NASD Rule 1140. Electronic Filing Rules.
1150. Executive Representative	NASD Rule 1150. Executive Representative.
1160. Contact Information Requirements	NASD Rule 1160. Contact Information Requirements.
2110. Standards of Commercial Honor and Principles of Trade*	FINRA 2010. Standards of Commercial Honor and Principles of Trade*.
IM–2110–2. Trading Ahead of Customer Limit Orders	NASD IM–2110–2. Trading Ahead of Customer Limit Orders.
IM–2110–3. Front Running Policy	NASD IM–2110–3. Front Running Policy.
IM–2110–4. Trading Ahead of Research Reports	NASD IM–2110–4. Trading Ahead of Research Reports.
IM–2110–5. Anti-Intimidation/Coordination	NASD IM–2110–5. Anti-Intimidation/Coordination.
IM–2110–6. Confirmation of Callable Common Stock	NASD IM–2110–6. Confirmation of Callable Common Stock.
IM–2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes.	NASD IM–2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes.
2111. Trading Ahead of Customer Market Orders	NASD 2111. Trading Ahead of Customer Market Orders.
2120. Use of Manipulative, Deceptive or Other Fraudulent Devices*	FINRA Rule 2020. Use of Manipulative, Deceptive or Other Fraudulent Devices*.
2210. Communications with the Public	NASD Rule 2210. Communications with the Public.
IM–2210–1. Guidelines to Ensure That Communications With the Public Are Not Misleading.	NASD IM–2210–1. Guidelines to Ensure That Communications With the Public Are Not Misleading.
2211. Institutional Sales Material and Correspondence	NASD Rule 2211. Institutional Sales Material and Correspondence.
2212. Telemarketing	NASD Rule 2212. Telemarketing.
2240. Disclosure of Control Relationship with Issuer	NASD Rule 2240. Disclosure of Control Relationship with Issuer.
2250. Disclosure of Participation or Interest in Primary or Secondary Distribution.	NASD Rule 2250. Disclosure of Participation or Interest in Primary or Secondary Distribution.
2260. Forwarding of Proxy and Other Materials	NASD Rule 2260. Forwarding of Proxy and Other Materials.
IM–2260. Suggested Rates of Reimbursement	NASD IM–2260. Suggested Rates of Reimbursement.
2270. Disclosure of Financial Condition to Customers	NASD Rule 2270. Disclosure of Financial Condition to Customers.
2290. Fairness Opinions	FINRA Rule 5150. Fairness Opinions.
2310. Recommendations to Customers (Suitability)	NASD Rule 2310. Recommendations to Customers (Suitability).
IM–2310–2. Fair Dealing with Customers	NASD IM–2310–2. Fair Dealing with Customers.
IM–2310–3. Suitability Obligations to Institutional Customers	NASD IM–2310–3. Suitability Obligations to Institutional Customers.
2320. Best Execution and Interpositioning	NASD Rule 2320. Best Execution and Interpositioning.
IM–2320. Interpretive Guidance with Respect to Best Execution Requirements.	NASD IM–2320. Interpretive Guidance with Respect to Best Execution Requirements.
2330. Customers' Securities or Funds	NASD Rule 2330. Customers' Securities or Funds.
IM–2330. Segregation of Customers' Securities	NASD IM–2330. Segregation of Customers' Securities.
2340. Customer Account Statements	NASD Rule 2340. Customer Account Statements.
2341. Margin Disclosure Statement	NASD Rule 2341. Margin Disclosure Statement.
2342. SIPC Information	NASD Rule 2342. SIPC Information.
2360. Approval Procedures for Day Trading Accounts	NASD Rule 2360. Approval Procedures for Day Trading Accounts.
2361. Day-Trading Risk Disclosure Statement	NASD Rule 2361. Day-Trading Risk Disclosure Statement.
2370. Borrowing From or Lending to Customers	NASD Rule 2370. Borrowing From or Lending to Customers.
2430. Charges for Services Performed	NASD Rule 2430. Charges for Services Performed.
2441. Net Transactions with Customers	NASD Rule 2441. Net Transactions with Customers.
2460. Payments for Market Making	NASD Rule 2460. Payments for Market Making.
2510. Discretionary Accounts	NASD Rule 2510. Discretionary Accounts.
2520. Margin Requirements	NASD Rule 2520. Margin Requirements.
2810. Direct Participation Programs	NASD Rule 2810. Direct Participation Programs.
2830. Investment Company Securities	NASD Rule 2830. Investment Company Securities.
2841. General	NASD Rule 2841. General.
2842. Definitions	NASD Rule 2842. Definitions.
2843. Account Approval	NASD Rule 2843. Account Approval.
2844. Suitability	NASD Rule 2844. Suitability.
2845. Discretionary Accounts	NASD Rule 2845. Discretionary Accounts.
2846. Supervision of Accounts	NASD Rule 2846. Supervision of Accounts.
2847. Customer Complaints	NASD Rule 2847. Customer Complaints.
2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants.	NASD Rule 2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants
2849. Maintenance of Records	NASD Rule 2849. Maintenance. of Records.
2850. Position Limits	NASD Rule 2850. Position Limits.
2851. Exercise Limits	NASD Rule 2851. Exercise Limits.
2853. Liquidation of Index Warrant Positions	NASD Rule 2853. Liquidation of Index Warrant Positions.
2910. Disclosure of Financial Condition to Other Members	NASD Rule 2910. Disclosure of Financial Condition to Other Members.
3010. Supervision	NASD Rule 3010. Supervision.
IM–3010–1. Standards for Reasonable Review	NASD IM–3010–1. Standards for Reasonable Review.
3011. Anti-Money Laundering Compliance Program	NASD Rule 3011. Anti-Money Laundering Compliance Program.
IM–3011–1. Independent Testing Requirements	NASD IM–3011–1. Independent Testing Requirements.

RULES CERTIFICATION FOR 17d–2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
IM–3011–2. Review of Anti-Money Laundering Compliance Person Information.	NASD IM–3011–2. Review of Anti-Money Laundering Compliance Person Information.
3012. Supervisory Control System	NASD Rule 3012. Supervisory Control System.
3013. Annual Certification of Compliance and Supervisory Processes	FINRA Rule 3130. Annual Certification of Compliance and Supervisory Processes.
IM–3013. Annual Compliance and Supervision Certification	FINRA Rule 3130. Annual Certification of Compliance and Supervisory Processes.
3020. Fidelity Bonds	NASD Rule 3020. Fidelity Bonds.
3030. Outside Business Activities of an Associated Person	NASD Rule 3030. Outside Business Activities of an Associated Person.
3040. Private Securities Transactions of an Associated Person	NASD Rule 3040. Private Securities Transactions of an Associated Person.
3050. Transactions for or by Associated Persons	NASD Rule 3050. Transactions for or by Associated Persons.
3060. Influencing or Rewarding Employees of Others	FINRA Rule 3220. Influencing or Rewarding Employees of Others.
3070. Reporting Requirements	NASD Rule 3070. Reporting Requirements.
3080. Disclosure to Associated Persons When Signing Form U–4	NASD Rule 3080. Disclosure to Associated Persons When Signing Form U–4.
3090. Transactions Involving Exchange Employees	FINRA Rule 2070. Transactions Involving FINRA Employees.
3110. Books and Records	NASD Rule 3110. Books and Records
IM–3110. Customer Account Information	NASD IM–3110. Customer Account Information.
3120. Use of Information Obtained in Fiduciary Capacity	NASD Rule 3120. Use of Information Obtained in Fiduciary Capacity.
3121. Custodian of the Record	NASD Rule 3121. Custodian of the Record.
3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.	NASD Rule 3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.
IM–3130 Restrictions on Member's Activity	NASD IM–3130 Restrictions on Member's Activity.
3140. Approval of Change in Exempt Status Under SEC Rule 15c3–3	NASD Rule 3140. Approval of Change in Exempt Status Under SEC Rule 15c3–3.
3150. Reporting Requirements for Clearing Firms	NASD Rule 3150. Reporting Requirements for Clearing Firms.
IM–3150. Exemptive Relief	NASD IM–3150. Exemptive Relief.
3160. Extensions of Time under Regulation T and SEC Rule 15c3–3	NASD Rule 3160. Extensions of Time under Regulation T and SEC Rule 15c3–3.
3220. Adjustment of Open Orders	NASD Rule 3220. Adjustment of Open Orders.
3230. Clearing Agreements	NASD Rule 3230. Clearing Agreements.
3310. Publication of Transactions and Quotations	NASD Rule 3310. Publication of Transactions and Quotations.
IM–3310. Manipulative and Deceptive Quotations	NASD IM–3310. Manipulative and Deceptive Quotations.
3320. Offers at Stated Prices	NASD Rule 3320. Offers at Stated Prices.
3330. Payment Designed to Influence Market Prices, Other than Paid Advertising.	NASD Rule 3330. Payment Designed to Influence Market Prices, Other than Paid Advertising.
3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.	NASD Rule 3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.
3351. Trading Practices	FINRA Rule 6140. Other Trading Practices.
3360. Short-Interest Reporting	FINRA Rule 4560. Short-Interest Reporting.
3370. Prompt Receipt and Delivery of Securities	NASD Rule 3370. Prompt Receipt and Delivery of Securities.
3380. Order Entry and Execution Practices	NASD Rule 3380. Order Entry and Execution Practices.
3510. Business Continuity Plans	NASD Rule 3510. Business Continuity Plans.
3520. Emergency Contact Information	NASD Rule 3520. Emergency Contact Information.
6951. Definitions	FINRA Rule 7410. Definitions.
6952. Applicability	FINRA Rule 7420. Applicability.
6953. Synchronization of Member Business Clocks	FINRA Rule 7430. Synchronization of Member Business Clocks.
6954. Recording of Order Information	FINRA Rule 7440. Recording of Order Information.
6955. Order Data Transmission Requirements	FINRA Rule 7450. Order Data Transmission Requirements.
6956. Violation of Order Audit Trail System Rules	FINRA Rule 7460. Violation of Order Audit Trail System Rules.
6958. Exemption to the Order Recording and Data Transmission Requirements.	FINRA Rule 7470. Exemption to the Order Recording and Data Transmission Requirements.
8110. Availability of Manual to Customers	FINRA Rule 8110. Availability of Manual to Customers.
8120. Definitions	FINRA Rule 8120. Definitions.
10100. Jurisdiction	FINRA Rule 10100. Administrative Provisions.
IM–10100. Failure to Act Under Provisions of Code of Arbitration Procedure.	FINRA IM–10100. Failure to Act Under Provisions of Code of Arbitration Procedure.
10101. Matters Eligible for Submission	FINRA Rule 10101. Matters Eligible for Submission.
10102. Non-Waiver of Objects and Purposes	FINRA Rule 10102. National Arbitration and Mediation Committee.
11100. Scope of Uniform Practice Code	NASD Rule 11100. Scope of Uniform Practice Code.
11110. The Exchange's Regulation Department	NASD Rule 11110. The Exchange's Regulation Department.
IM–11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff.	NASD IM–11110. Refusal to Abide by Rulings of the Exchange's Regulation Department Staff.
11120. Definitions	NASD Rule 11120. Definitions.
11130. When, As and If Issued/Distributed Contracts	NASD Rule 11130. When, As and If Issued/Distributed Contracts.
IM–11130. Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract.	NASD IM–11130. Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract.
11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants".	NASD Rule 11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants".

RULES CERTIFICATION FOR 17d–2 AGREEMENT WITH FINRA—Continued

BX Rule	FINRA (or NASD) Rule
11150. Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''	NASD Rule 11150. Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''.
11160. ''Ex'' Liquidating Payments	NASD Rule 11160. ''Ex'' Liquidating Payments.
11170. Transactions in ''Part-Redeemed'' Bonds	NASD Rule 11170. Transactions in ''Part-Redeemed'' Bonds.
11190. Reconfirmation and Pricing Service Participants	NASD Rule 11190. Reconfirmation and Pricing Service Participants.
11210. Sent By Each Party	NASD Rule 11210. Sent By Each Party.
IM–11210. Uniform Comparison Form	NASD IM–11210. Uniform Comparison Form.
11220. Description of Securities	NASD Rule 11220. Description of Securities.
11310. Book-Entry Settlement	NASD Rule 11310. Book-Entry Settlement.
11320. Dates of Delivery	NASD Rule 11320. Dates of Delivery.
11330. Payment	NASD Rule 11330. Payment.
11340. Stamp Taxes	NASD Rule 11340. Stamp Taxes.
11350. Part Delivery	NASD Rule 11350. Part Delivery.
11360. Units of Delivery	NASD Rule 11360. Units of Delivery.
IM–11360. Uniform Delivery Ticket Form	NASD IM–11360. Uniform Delivery Ticket Form.
11361. Units of Delivery—Stocks	NASD Rule 11361. Units of Delivery—Stocks.
11362. Units of Delivery—Bonds	NASD Rule 11362. Units of Delivery—Bonds.
11363. Units of Delivery—Unit Investment Trust Securities	NASD Rule 11363. Units of Delivery—Unit Investment Trust Securities.
11364. Units of Delivery—Certificates of Deposit for Bonds	NASD Rule 11364. Units of Delivery—Certificates of Deposit for Bonds.
IM–11364. Trading Securities As ''Units'' or Bonds ''With Stock''	NASD IM–11364. Trading Securities As ''Units'' or Bonds ''With Stock''.
11410. Acceptance of Draft	NASD Rule 11410. Acceptance of Draft.
11510. Delivery of Temporary Certificates	NASD Rule 11510. Delivery of Temporary Certificates.
11520. Delivery of Mutilated Securities	NASD Rule 11520. Delivery of Mutilated Securities.
11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless.	NASD Rule 11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless.
11540. Delivery Under Government Regulations	NASD Rule 11540. Delivery Under Government Regulations.
11550. Assignments and Powers of Substitution; Delivery of Registered Securities.	NASD Rule 11550. Assignments and Powers of Substitution; Delivery of Registered Securities.
IM–11550. Uniform Transfer Instructions Form	NASD IM–11550. Uniform Transfer Instructions Form.
11560. Certificate of Company Whose Transfer Books Are Closed	NASD Rule 11560. Certificate of Company Whose Transfer Books Are Closed.
IM–11560. Sample Ownership Transfer Indemnification Stamp	NASD IM–11560. Sample Ownership Transfer Indemnification Stamp.
11570. Certificates in Various Names	NASD Rule 11570. Certificates in Various Names.
11571. Certificate in Name of Corporation	NASD Rule 11571. Certificate in Name of Corporation.
IM–11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency.	NASD IM–11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency.
11572. Certificate in Name of Firm	NASD Rule 11572. Certificate in Name of Firm.
11573. Certificate in Name of Dissolved Firm Succeeded by New Firm	NASD Rule 11573. Certificate in Name of Dissolved Firm Succeeded by New Firm.
11574. Certificate in Name of Deceased Person, Trustee, etc.	NASD Rule 11574. Certificate in Name of Deceased Person, Trustee, etc.
IM–11574. Sample Limited Partnership Change of Trustee Form	NASD IM–11574. Sample Limited Partnership Change of Trustee Form.
11610. Liability for Expenses	NASD Rule 11610. Liability for Expenses.
11620. Computation of Interest	NASD Rule 11620. Computation of Interest.
11630. Due-Bills and Due-Bill Checks	NASD Rule 11630. Due-Bills and Due-Bill Checks.
IM–11630. Sample Due-Bill Forms	NASD IM–11630. Sample Due-Bill Forms.
11640. Claims for Dividends, Rights, Interest, etc.	NASD Rule 11640. Claims for Dividends, Rights, Interest, etc.
11650. Transfer Fees	NASD Rule 11650. Transfer Fees
11710. General Provisions	NASD Rule 11710. General Provisions.
IM–11710. Uniform Reclamation Form	NASD IM–11710. Uniform Reclamation Form.
11720. Irregular Delivery—Transfer Refused—Lost or Stolen Securities	NASD Rule 11720. Irregular Delivery—Transfer Refused—Lost or Stolen Securities.
IM–11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled.	NASD IM–11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled.
11730. Called Securities	NASD Rule 11730. Called Securities.
11740. Marking to the Market	NASD Rule 11740. Marking to the Market.
11810. Buying-In	NASD Rule 11810. Buying-In.
IM–11810. Sample Buy-In Forms	NASD IM–11810. Sample Buy-In Forms.
11820. Selling-Out	NASD Rule 11820. Selling-Out.
11840. Rights and Warrants	NASD Rule 11840. Rights and Warrants.
IM–11840. Sample Letter of Indemnity	NASD IM–11840. Sample Letter of Indemnity.
11860. Acceptance and Settlement of COD Orders	NASD Rule 11860. Acceptance and Settlement of COD Orders.
11870. Customer Account Transfer Contracts	NASD Rule 11870. Customer Account Transfer Contracts.
IM–11870. Sample Transfer Instruction Forms	NASD IM–11870. Sample Transfer Instruction Forms.
11880. Settlement of Syndicate Accounts	NASD Rule 11880. Settlement of Syndicate Accounts.

* FINRA shall not perform Regulatory or Enforcement Responsibilities under this Agreement for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. as approved by the SEC on October 17, 2008.

The following provisions are covered by the Agreement between the Parties:

- SEC '34 Act Section 28(e) Effect on Existing Law
- SEC '34 Act Rule 10b–10 Confirmation of Transactions
- SEC '34 Act Rule 203 of Regulation SHO Borrowing and Delivery Requirements
- SEC '34 Act Rule 606 of Regulation NMS Disclosure of Order Routing Information
- SEC '34 Act Rule 607 of Regulation NMS Customer Account Statements
- FINRA shall not perform Regulatory or Enforcement Responsibilities under this Agreement for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d–2 Agreement by and among the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc. as approved by the SEC on October 17, 2008.

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act [18] and Rule 17d–2 thereunder,[19] after January 6, 2009, the Commission may, by written notice, declare the plan submitted by BX and FINRA, File No. 4–575, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve BX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–575 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–575. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 am and 3 pm. Copies of the plan also will be available for inspection and copying at the principal offices of BX and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–575 and should be submitted on or before January 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30321 Filed 12–19–08; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78q(d)(1).

[19] 17 CFR 240.17d–2.

[20] 17 CRF 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59095; File No. SR–BATS–2008–012]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of the Exchange

December 12, 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 December 9, 2008, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 proposes to modify its fee schedule applicable to use of the Exchange effective December 12, 2008 in order to (i) implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies, and (ii) substitute the current fee schedule with a fee schedule in a revised format.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies. In addition, the Exchange proposes to reformat the fee schedule to better reflect the routing charges applicable to Members.

(a) Orders Routed to and Executed at Dark Liquidity Venues

The Exchange recently amended its Rule 11.13 to provide additional flexibility to the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (the ''Outbound Router'') in making routing determinations.[5] This rule change was primarily made to permit the Outbound Router to send orders to Trading Centers (as defined in Exchange Rule 2.11),[6] without limiting the permissible destinations to execution venues with ''protected quotations'' (as defined in Rule 600(b)(58) of the Act).[7] Such Trading Centers may include execution venues known as dark liquidity venues, which do not publish quotations. Because dark liquidity venues provide the possibility of executions at reduced rates, the Exchange is proposing to charge Members $0.0020 per share executed at such a dark liquidity venue. The Exchange will continue to charge $0.0029 per share executed at any other Trading Center. The proposed fee schedule also notes, consistent with the Exchange's technical specifications, that the default best execution routing strategy first attempts to route to dark liquidity venues (''DART'' routing) and then to other Trading Centers (''CYCLE'' routing).

(b) Non-Substantive, Structural Changes

In addition to the proposed change above related to orders routed to and executed at dark liquidity venues, the Exchange is proposing to make certain non-substantive, structural changes to its fee schedule. First, the Exchange is proposing to restructure its fee schedule to distinguish between its standard routing charges (i.e., those charges for orders routed away by the Outbound Router under its best execution strategies) and non-standard routing charges imposed for specific order types and securities (e.g., Destination Specific Orders, odd lot orders and securities priced below $1.00 per share). In addition, the Exchange proposes to consolidate into one list certain Destination Specific Orders[8] which were previously listed separately, as such order types are each charged the same fee.[9] The Exchange believes that the revised format of the fee schedule is more transparent and easy to understand with respect to fees charged for routed orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues, and that reduced transaction fees for shares executed at dark liquidity venues will benefit market participants. Also, although routing options are available to all Members, Members are not required to use the Exchange's Outbound Router for routing to other Trading Centers. The Exchange also believes that the reformatted fee schedule sets forth the fees applicable to routed orders in a more transparent manner. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2008–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2008–012. This file

[5] *See* Securities Exchange Act Release No. 34–58776 (October 14, 2008), 73 FR 63529 (October 24, 2008) (SR–BATS–2008–007).

[6] The Exchange's definition of Trading Center, contained in Rule 2.11, is consistent with the definition of ''trading center'' contained in Rule 600(b)(78) of Regulation NMS.

[7] 17 CFR 242.600(b)(58).

[8] As defined in BATS Rule 11.9(c)(10).

[9] The Exchange charges $0.0029 per share for Destination Specific Orders routed to the NASDAQ Stock Market, the International Securities Exchange, and the National Securities Exchange.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(6).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to makeavailable publicly. All submissions should refer to File Number SR–BATS–2008–012 and should be submitted on or before January 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30318 Filed 12–19–08; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59102; File No. SR–DTC–2008–11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Implement a New Service To Allow Issuers To Track and Limit the Number of Beneficial Owners for an Individual CUSIP

December 15, 2008.

I. Introduction

On August 6, 2008, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On September 5, 2008, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] The Commission received one comment letter in response to the proposed rule change.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change provides for the implementation of a new service that will allow issuers, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners of their privately transacted and closely held securities. This service will be called the Security Holder Tracking Service (''SH Tracking Service'').

The SH Tracking Service will facilitate the book-entry settlement and asset servicing for securities that are privately transacted and closely held by providing a tool for issuers and their agents to monitor and limit the number and character (*e.g.*, qualified institutional buyers or ''QIBs'') of beneficial owners of its securities (''Tracked Securities'').[4] Although the SH Tracking Service was developed to address the specific concerns of Rule 144A securities,[5] in practice DTC envisions that it could be utilized for other types of securities for which the number or character of the beneficial owners requires some level of control.

The eligibility process for a Tracked Security to be made and remain DTC-eligible will not change from DTC's current process. However, under the new system, DTC will be requested in writing to set up a specific CUSIP for tracking such securities[6] and will be notified who will perform the function of the issuer's administrator for the CUSIP in the SH Tracking Service.[7] Upon receipt of all of such documentation, DTC will make the CUSIP DTC-eligible and will activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC will perform asset servicing for the issue.

The issuer's administrator will control movements of the particular CUSIP for which it had been appointed. Once the tracking indicator has been activated on the master file and the Administrator has been appointed, no transfer of the securities will take place in the Tracked Security without the approval of the administrator through DTC's Inventory Management System (''IMS''). The administrator, based on requirements of the issuer, will be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the administrator, DTC will perform centralized book-entry settlement. IMS will only allow an administrator access to view and approve transactions for CUSIPs for which it had been appointed administrator as reflected in DTC's records.

Because DTC is relying solely on the instructions of the administrator in order to effect settlement in Tracked Securities and will have no knowledge of the number or character of the underlying beneficial owners, use of the SH Tracking Service by any party will constitute an agreement that DTC shall not be liable for any loss or damages related to the use of the SH Tracking System. Each user of the SH Tracking Service must agree to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the SH Tracking Service.

The Tracked Securities will not be held as part of a participant's general free account and will not be considered eligible collateral in DTC's settlement system.

To recover the costs of building the SH Tracking Service, DTC will add the following fees to its Fee Schedule:

- $25,000 per CUSIP for SH Tracking Services;
- $5 per delivery and receive for Tracked Securities;
- $5 per receive and delivery for reclaims of Tracked Securities.

III. Comment Letter

Brent Welke, CEO of Agnova Corporation, wrote that, in the context of the settlement cycle, ''DTCC (sic) [should be] strictly liable for double ownership repercussions'' and that ''DTCC (sic) stockholders [should] jointly and severally guarantee DTCC obligations.'' Finally, Mr. Welke expressed concern about ''brokers who are facilitating share counterfeiting.''

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 58436 (Aug. 27, 2008), 73 FR 51870.

[3] Letter from Brent Welke, CEO, Agnova Corporation (Sept. 8, 2008).

[4] Issuers must control the number of beneficial owners pursuant to certain registration and reporting requirements. In order for issuers to be able to avoid the periodic reporting requirements required by the Act, they must not have more than 500 beneficial owners. 15 U.S.C. 78*l*(g), 15 U.S.C. 78m(a), 15 U.S.C. 78o(d).

[5] 17 CFR 230.144A.

[6] DTC anticipates that this instruction will come from the underwriter at the time of the initial distribution at DTC.

[7] DTC anticipates that the issuer's transfer agent will serve as its administrator.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,[8] which requires that the rules of a registered clearing agency are designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions. DTC's creation of a service to assist issuers and their agents fulfill their regulatory obligations to monitor and limit the number of beneficial shareholders of their closely held securities should provide a meaningful incentive for issuers and participants to utilize DTC's depository services, which should provide more efficient processing of such transactions by reducing the incidence of physical processing outside of DTC.

The Commission duly notes the importance of the issue of short selling that the commenter appeared to be expressing and will continue to monitor developments in this area and assert its oversight responsibilities of industry participants with the view to ensure that appropriate safeguards are in place to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors. However, that issue is outside the scope and purpose of this proposed rule change, which is to implement a service to allow issuers of closely held securities to enhance their compliance with federal securities laws.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–DTC–2008–11) be and hereby is approved.[11]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30322 Filed 12–19–08; 8:45 am]

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[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59097; File No. SR–FINRA–2008–057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update Rule Cross-References and Make Other Various Non-Substantive Technical Changes to FINRA Rules00

December 12, 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 December 3, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update rule cross-references and make other various non-substantive technical changes to FINRA rules that have been adopted in the consolidated FINRA rulebook but not yet implemented.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'').[5] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook. The proposed rule change would effectuate those amendments in certain rules that have been approved by the Commission but not yet implemented in the Consolidated FINRA Rulebook.

During the months of August and September 2008, the Commission approved nine FINRA proposed rule changes (''Phase 1 Rules'').[6] Those rules

[5] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[6] *See* Securities Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (Order Approving File No. SR–FINRA–2008–025); Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving File No. SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2,

will be implemented on December 15, 2008.[7] The proposed rule change generally would make several types of changes to those approved rules. First, it would update rule cross-references. For example, references to NASD rules would be changed to reference the new corresponding FINRA rules. In addition, the proposed rule change would update FINRA Rule 7410(g) to reference New York Stock Exchange Rule 132B, rather than Rule 80A, pursuant to a previously approved New York Stock Exchange rule filing.[8]

Second, the proposed rule change would adopt into the Consolidated FINRA Rulebook without material change new NASD rules that were approved after the Phase 1 Rules were submitted to the Commission: NASD Rules 12905 and 13905.[9] It would also update the Consolidated FINRA Rulebook to account for amendments to NASD and Incorporated NYSE Rules that were approved after the Phase I Rules were submitted to the Commission. Those affected rules are FINRA Rules 6220, 6275, 6540, 6560 (since deleted), 6622, 6730 and 9217.[10]

Third, the proposed rule change would delete a reference in FINRA Rule 5110 to ''SEC Regulation B'', which previously was rescinded.[11] In that same FINRA rule, the proposed rule change would add language that inadvertently was left out of the existing NASD rule when that NASD rule was adopted without material change into the Consolidated FINRA Rulebook.[12] The proposed rule change also would delete in FINRA Rule 6440 references to certain subparagraphs of SEA Rule 15c2–11 that no longer exist.

Fourth, the proposed rule change would replace references to the SEC's Electronic Data Gathering and Retrieval (''EDGAR'') System with its new name, the Interactive Data Electronic Applications (''IDEA'') System. Finally, the proposed rule change would update FINRA Rules 4560 and 5110 to reflect a change in FINRA style convention when referencing SEC rules and regulations.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on December 15, 2008, the date on which the previously approved rule changes will also be implemented.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15] As required under Rule 19b–4(f)(6)(iii),[16] FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day after the date of filing.[17] However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing so that FINRA can implement the proposed rule change on December 15, 2008, the same date on which the previously approved rule changes relating the Consolidated FINRA Rulebook will be implemented. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the proposed rule change presents any novel issues. The proposed rule change makes non-substantive changes to update FINRA rules in the Consolidated FINRA Rulebook to reflect changes to FINRA rules previously published for comment by the Commission. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

2008) (Order Approving File No. SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving File No. SR–FINRA–2008–030).

[7] *See* FINRA *Regulatory Notice* 08–57 (October 2008) (FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules).

[8] *See* Securities Exchange Act Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2007–96).

[9] *See* Securities Exchange Act Release No. 58739 (October 6, 2008), 73 FR 60738 (October 14, 2008) (Order Approving File No. SR–FINRA–2008–005).

[10] *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (Order Approving File No. SR–NASD–2005–146); Securities Exchange Act Release No. 58532 (September 12, 2008), 73 FR 54649 (September 22, 2008) (Order Approving File No. SR–NASD–2007–041); Securities Exchange Act Release No. 58331 (August 8, 2008), 73 FR 47990 (August 15, 2008) (Order Approving File No. SR–FINRA–2008–016); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR–FINRA–2008–039); Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR–FINRA–2008–036); Securities Exchange Act Release No. 58520 (September 11, 2008), 73 FR 54193 (September 18, 2008) (Order Approving File No. SR–FINRA–2008–040).

[11] *See* Securities Exchange Act Release No. 37262 (May 31, 1996), 61 FR 30397 (June 14, 1996) (File No. S7–6–96).

[12] *See* Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR–FINRA–2008–039, which failed to include language adopted in SR–NASD–2001–046).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See id.*

[18] *Id.*

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–FINRA–2008–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–057 and should be submitted on or before January 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30319 Filed 12–19–08; 8:45 am]

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59092; File No. SR–ISE–2008–93]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 2 Premium Products.[3] 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the iShares Silver Trust (''SLV'')[4] and the iShares® COMEX Gold Trust (''IAU'').[5] The Exchange represents that SLV and IAU are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on SLV and IAU.[6] The amount of the execution fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[4] iShares® is a registered trademark of Barclays Global Investors, N.A. All other trademarks, service marks or registered trademarks are the property of their respective owners. The iShares Silver Trust's (''SLV'') sponsor is Barclays Global Investors International, Inc. (''BGII''), a subsidiary of Barclays Bank PLC. SLV is not sponsored, endorsed, sold or promoted by BGII, and BGII makes no representation regarding the advisability of investing in SLV. BGII has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SLV or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SLV or with making disclosures concerning options on SLV under any applicable federal or state laws, rules or regulations. BGII does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[5] iShares® is a registered trademark of Barclays Global Investors, N.A., ''Commodity Exchange, Inc.'' and ''COMEX'' are trademarks of Commodity Exchange, Inc., and have been licensed for use for certain purposes to Barclays Global Investors and the iShares® COMEX Gold Trust (''IAU''). All other trademarks, service marks or registered trademarks are the property of their respective owners. IAU's sponsor is Barclays Global Investors International, Inc., (''BGII''), a Delaware corporation and a subsidiary of Barclays Bank PLC. IAU is not sponsored, endorsed, sold or promoted by BGII or by Commodity Exchange, Inc., nor do BGII and Commodity Exchange, Inc., make any representation regarding the advisability of investing in IAU. BGII and Commodity Exchange, Inc., have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IAU or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IAU or with making disclosures concerning options on IAU under any applicable federal or state laws, rules or regulations. BGII and Commodity Exchange, Inc., do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[6] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage

for products covered by this filing shall be $0.18 per contract for all Public Customer Orders [7] and $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[8] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[9] Further, since options on SLV and IAU are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove MYP, PUF, SAW and WSI from its Schedule of fees.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [13] and Rule 19b–4(f)(2)[14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2008–93 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–2008–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2008–93 and should be submitted on or before January 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30317 Filed 12–19–08; 8:45 am]

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P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[7] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[8] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[9] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 per contract.

[10] MYP, PUF, SAW and WSI were recently delisted and no longer trade on the Exchange.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2) [sic].

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59098; File No. SR–NASDAQ–2008–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Generic Listing Standards for Index Multiple Exchange Traded Fund Shares and Index Inverse Exchange Traded Fund Shares

December 12, 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 December 9, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend Nasdaq Rule 4420(j) in connection with generic listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

standards, which permit Nasdaq to list and trade, or trade pursuant to unlisted trading privileges (''UTP''), shares of a series of Index Multiple Exchange Traded Fund Shares (''Multiple Fund Shares'') and Index Inverse Exchange Traded Fund Shares (''Inverse Fund Shares'') (collectively, the ''Fund Shares'').

The proposed rule change would allow the listing and trading of Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding −300% (currently −200%) of the underlying benchmark index pursuant to Rule 19b–4(e) under the Act,[3] where the other applicable generic listing standards under Nasdaq Rule 4420(j) for Index Fund Shares (''IFSs'') are satisfied. The proposed rule change is substantially identical to a recent NYSEArca filing, which has been considered previously by the Commission when the Commission approved the proposed rule change.[4]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Rule 4420(j) provides standards for listing IFSs on the Exchange. Nasdaq proposes to amend Nasdaq Rule 4420(j)(1)(B)(iii) to allow the listing and trading of Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding −300% (currently −200%) of the underlying benchmark index where the other applicable generic listing standards under Nasdaq Rule 4420(j) for IFSs are satisfied. The Exchange also notes that the Commission has approved the original listing and trading of Fund Shares on the American Stock Exchange LLC.[5]

Generic Listing Standards

Nasdaq Rule 4420(j) provides standards for listing IFSs, which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of securities that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic securities index or fixed income index. Pursuant to Nasdaq Rule 4420(j)(1)(A), IFSs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (''NAV''). When aggregated in the same specified minimum number, IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined NAV. Consistent with Nasdaq Rule 4420(j)(9)(A)(ii), the NAV is calculated once a day after the close of the regular trading day.

The proposed revisions to Nasdaq Rule 4420(j)(1)(B)(iii) would allow the listing and trading of Multiple Fund Shares and Inverse Fund Shares that sought to provide investment results, before fees and expenses, in an amount not exceeding −300%, rather than −200%, of the underlying benchmark index pursuant to Rule 19b–4(e) under the Act,[6] where the other applicable generic listing standards for IFSs are satisfied. In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[7] In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[8]

The Exchange believes that adopting generic listing and trading standards for Fund Shares based on domestic equity, international or global equity and/or fixed income securities indexes and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those IFSs that satisfy the proposed standards to commence trading, without the need for individualized Commission approval. The proposed rule has the potential to reduce the time frame for bringing Fund Shares to market, thereby reducing the burdens on issuers and other market participants.[9]

The Commission has approved generic standards providing for the listing and trading of derivative products pursuant to Rule 19b–4(e) based on indexes previously approved by the Commission under Section 19(b)(2) of the Act[10] and the Exchange[11] also notes that the generic listing standards provide for indexes that have been approved by the Commission in connection with the listing of Portfolio Depository Receipts, Index Fund Shares or Index-Linked Securities. The Exchange believes that the application of that standard to Fund Shares is appropriate because the underlying securities index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives.

The Exchange notes that existing Nasdaq Rule 4420(j)(9)(B) provides continued listing standards for all IFSs. For example, where the value of the underlying index or portfolio of securities on which the IFS is based is no longer calculated or available, or in the event that the IFS chooses to substitute a new index or portfolio for the existing index or portfolio, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Nasdaq Rule 4420(j). If an IFS chose to substitute an index that did not meet all of the applicable generic listing standards of IFSs pursuant to Rule 19b–4(e) of the Act,[12] then, to continue to list and trade the IFS, approval by the Commission of a separate filing

[3] 17 CFR 240.19b–4(e).

[4] *See* Securities Exchange Act Release No. 58825 (October 21, 2008), 73 FR 63756 (October 27, 2008) (SR–NYSEArca–2008–89).

[5] *See* Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR–Amex–2007–131).

[6] 17 CFR 240.19b–4(e).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 240.19b–4(e).

[9] The Exchange submits that the failure of a particular Fund Share portfolio to comply with the proposed generic listing and trading standards under Rule 19b–4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular Fund Share.

[10] 15 U.S.C. 78s(b)(2). *See* Securities Exchange Act Release No. 54765 (November 16, 2006), 71 FR 67668 (November 22, 2006) (SR–Nasdaq–2006–009) (Commodity-Linked Securities).

[11] *See* e-mail from Jonathan Cayne, Associate General Counsel, NASDAQ OMX, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated December 12, 2008 (''December 12 E-mail'').

[12] 17 CFR 240.19b–4(e).

pursuant to Section 19(b)(2) of the Act[13] is required.[14] In addition, the Exchange further notes that existing Nasdaq Rule 4420(j)(9)(A)(ii) provides that, prior to approving an IFS for listing, the Exchange will obtain a representation from the issuer that the NAV per share will be calculated daily and made available to all market participants at the same time.

Nasdaq Rule 4420(j)(1)(B)(iv) provides for the halt of trading for Fund Shares if the Exchange becomes aware that the open-end investment company fails to properly disseminate the appropriate NAV to market participants at the same time. In addition, the rule also requires a halt to trading if the open-end investment company issuing the Fund Shares failed to provide daily public Web site disclosure of its portfolio holdings. In particular, Nasdaq Rule 4420(j)(1)(B)(iv) provides that the Exchange will halt trading in a series of Multiple Fund Shares and/or Inverse Fund Shares if the Exchange becomes aware that the open-end investment company issuing the Fund Shares fails to disseminate the appropriate NAV to all market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings.

The investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, by a specified multiple (Multiple Fund Shares) or inversely up to −300% (Inverse Fund Shares) of the underlying performance benchmark domestic equity, international or global equity and/or fixed income indexes, as applicable. Fund Shares differ from traditional exchange-traded fund shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance.

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Fund Shares may hold a combination of financial instruments, including, but not limited to: Stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the ''Financial Instruments''). Normally, 100% of the value of the underlying portfolios for the Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the ''Money Market Instruments''). The underlying portfolios for Multiple Fund Shares may consist of a combination of securities, Financial Instruments and Money Market Instruments.

Limitation on Leverage

In connection with Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[15] In particular, Nasdaq Rule 4420(j)(1)(B)(iii) would expressly prohibit Inverse Funds that seek to provide investment results, before fees and expenses, in an amount that exceeds -300% of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[16]

In connection with Multiple Fund Shares, Nasdaq Rule 4420(j)(1)(B) does not provide a similar limitation on leverage. Instead, the proposal would permit the underlying registered management investment company or fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on given day of a particular domestic equity, international or global equity, or fixed income securities indexes or a combination thereof.

Availability of Information About Fund Shares and Underlying Indexes

Nasdaq Rule 4420(j)(1)(B)(iv) provides that the portfolio composition of a Fund will be disclosed on a public Web site. Web site disclosure of portfolio holdings that form the basis for the calculation of the NAV by the issuer of a series of Fund Shares is made daily and includes, as applicable, the identity and number of shares held of each specific equity security, the identity and amount held of each fixed income security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of a fund. This public Web site disclosure of the portfolio composition of a Fund, that forms the basis for the calculation of the NAV, coincides with the disclosure of the same information to ''Authorized Participants.''[17] Investors have access to the current portfolio composition of a Fund through the Fund's Web site and/or at the Exchange's Web site at *http://www.nasdaqomx.com.*

Trading Halts

Existing trading halt requirements for IFSs apply to Fund Shares. Nasdaq will halt trading in Fund Shares under the conditions specified in Nasdaq Rules 4120 and 4121, as well as subject to Nasdaq Rule 4420(j)(1)(B)(iv). The conditions for a halt include a regulatory halt by the listing market. UTP trading in Fund Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the calculation of the estimated NAV (''Intraday Indicative Value''), which is updated regularly during the trading day, among other values.

If Nasdaq becomes aware that the NAV or the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') with respect to a Fund Share is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares.

Additionally, Nasdaq may cease trading Fund Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading Fund Shares if the listing market delists them.

[13] 15 U.S.C. 78s(b)(2).

[14] *See* December 12 E-mail, *supra,* note 11.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 240.19b–4(e).

[17] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC. The format of the disclosure of portfolio holdings to Authorized Participants may differ from the format of the public Web site disclosure.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Fund Shares and highlighting the special risks and characteristics of Funds Shares as well as applicable Exchange rules.

Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Fund Shares in Baskets (and that Fund Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Fund Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Fund Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading Fund Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Fund Shares directly from a Fund will receive a prospectus. Members purchasing Fund Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that Fund Shares are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Fund Shares of the Funds and that the NAV for the Fund Shares will be calculated after 4 p.m. (Eastern Time) each trading day.

Surveillance

The Exchange utilizes its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in Fund Shares. The Exchange represents that such procedures are adequate to address any concerns about the trading of Fund Shares on Nasdaq. Trading of Fund Shares through Nasdaq are subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.[18] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of the ISG.[19]

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[20] in general and Section 6(b)(5) of the Act[21] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of Fund Shares and will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

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–2008–096 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–2008–096. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2008–096 and

[18] FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

[19] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.*

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

should be submitted on or before January 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30320 Filed 12–19–08; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11432 and # 11433]

Louisiana Disaster Number LA–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1792–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/11/2008 through 11/07/2008.

Effective Date: 12/15/2008.

Physical Loan Application Deadline Date: 01/12/2009.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: 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 Louisiana, dated 09/13/2008, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/12/2009.

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. E8–30414 Filed 12–19–08; 8:45 am]

BILLING CODE 8025–01–P

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11430 and # 11431]

Texas Disaster Number TX–00308

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1791–DR), dated 09/13/2008.

Incident: Hurricane Ike.

Incident Period: 09/07/2008 through 10/02/2008.

Effective Date: 12/12/2008.

Physical Loan Application Deadline Date: 01/12/2009.

EIDL Loan Application Deadline Date: 06/15/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: 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 Texas, dated 09/13/2008, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/12/2009.

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. E8–30415 Filed 12–19–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6436]

Advisory Committee International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of the fourth meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Public input: Any member of the public interested in providing public input to the meeting should contact Mr. Chris Wood, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail or fax) prior to the close of business on February 6, 2009; written comments from members of the public for distribution at this meeting must reach Mr. Wood by letter, e-mail or fax by this same date.

Meeting agenda: The agenda of the meeting will include a review of the results of the October-November 2008 sessions of the UPU Postal Operations Council and Council of Administration as well as other subjects related to international postal and delivery services of interest to Advisory Committee members and the public.

DATES: February 12, 2009 from 2 p.m. to about 5 p.m. (open to the public).

Location: The American Institute of Architects (Boardroom), 1735 New York Ave., NW., Washington, DC 20006.

For further information, please contact Christopher Wood, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *woodcs@state.gov.*

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services: Dennis M. Delehanty.

Dated: December 5, 2008.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. E8–30375 Filed 12–19–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Marana Regional Airport, Marana, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Town of Marana under the provisions of Title I of the Aviation Safety and Noise

Abatement Act, as amended, (Public Law 96–193) (hereinafter referred to as ''the Act) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 7, 2007, the FAA determined that the noise exposure maps submitted by the Town of Marana under Part 150 were in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Marana Regional Airport is November 26, 2008.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, CA 90009–2007, Telephone: 310/725–3637. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Marana Regional Airport, effective November 26, 2008. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAAs approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Los Angeles, California.

The Town of Marana, submitted to the FAA on October 11, 2006, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 13, 2005 through July 27, 2006. The Marana Regional Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on December 7, 2007. Notice of this determination was published in the **Federal Register** on December 17, 2007.

The Marana Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (October 11, 2006 to beyond the year 2010). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on June 6, 2008 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight (8) proposed actions for noise abatement, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Acting Manager of the Airports Division, Western-Pacific Region, effective November 26, 2008.

Outright approval was granted for one (1) Noise Abatement measure, four (4) of five (5) Land Use Management measures and two (2) Program Management measures. The approved measures included such items as: Develop a Pilot and Public Education Program; Revise the Town of Marana's General Plan to establish a land use compatibility threshold for noise sensitive land uses; The Town of Marana should consider adopting an airport compatibility checklist for discretionary review of projects within the Airport Influence Area (AIA). The Town of Marana should encourage Pima County to adopt a similar checklist for projects within the AIA that fall under the county's jurisdiction; Consider maintaining the rural residential and agricultural zoning classifications between the 55 DNL and AIA; The Town of Marana should adopt an overlay zone to regulate the development of noise sensitive land uses within the AIA; Update Noise Exposure Maps and Noise Compatibility Program; Monitor Implementation of the Part 150 Noise Compatibility Program.

FAA disapproved the following Land Use Management Measure: The Town of Marana should consider revising the existing subdivision regulations to require a noise and avigation easement as a condition of subdivision approval for those areas within the AIA. These determinations are set forth in detail in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on November 26, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the

FAA office listed above and at the administrative offices of the Town of Marana, Marana Regional Airport. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/*.

Issued in Hawthorne, California on November 28, 2008.

George Aiken,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. E8–30173 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Motor Carrier Safety Advisory Committee Meeting.

SUMMARY: FMCSA announces that the Motor Carrier Safety Advisory Committee (MCSAC) will hold a committee meeting on January 6, 2009. The meeting is open to the public.

DATES: The meeting will be held by conference call on January 6, 2009, from 11 a.m. to 12:30 p.m. Eastern Time.

Matters To Be Considered: The MCSAC will continue its work on Task 09–01 (Developing a National Agenda for Motor Carrier Safety).

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Miller, Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–1258, *mcsac@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) required the Secretary of the U.S. Department of Transportation to establish in FMCSA, a Motor Carrier Safety Advisory Committee. The advisory committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and motor carrier safety regulations. The advisory committee operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App 2).

II. Meeting Participation

The meeting is open to the public and FMCSA invites participation by all interested parties, including motor carriers, drivers, and representatives of motor carrier associations. For information on the agenda, bridge line and web link for the conference call, please send an e-mail to *mcsac@dot.gov.* For information on services for individuals with disabilities or to request special assistance, please e-mail your request to *mcsac@dot.gov* by January 2, 2009. Please note that oral comments will not be taken from the public due to time limitations. Members of the public are encouraged to submit written comments by January 2, 2009, identified by Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued on: December 16, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–30386 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–3637; FMCSA–00–7165; FMCSA–00–7363; FMCSA–00–8203; FMCSA–02–12294; FMCSA–06–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 13, 2009. Comments must be received on or before January 21, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–98–3637; FMCSA–00–7165; FMCSA–00–7363; FMCSA–00–8203; FMCSA–02–12294; FMCSA–06–26066, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 11 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David S. Brumfield
Robert R. Buis
George J. Ghigliotty
Charles R. Kuderer
William S. LaMar, Sr.
Thomas D. Laws
Clifford C. Priesmeyer
Gerald R. Rietmann
Arthur A. Sappington
William H. Smith
Edward C. Williams

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 66293; 68 FR 1654; 69 FR 71098; 72 FR 1054; 65 FR 33406; 65 FR 57234; 67 FR 57266; 65 FR 45817; 65 FR 77066; 67 FR 71610; 67 FR 46016; 67 FR 57267; 71 FR 63379; 72 FR 1050). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 21, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 8, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–30383 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7918; FMCSA–00–8398; FMCSA–06–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals. FMCSA has statutory

authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 9, 2009. Comments must be received on or before January 21, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–00–7918; FMCSA–00–8398; FMCSA–06–26066, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 44 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 44 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael L. Allen
Felipe Bayron
Dennis M. Boggs
Roy L. Brown
David L. Cattoor
Roger E. Clark
Gary C. Cone
Cesar A. Cruz
Arthur Dolengewicz
Wayne A. Elkins, II
Bruce A. Walker
Leon C. Flynn
David G. Guldan
Larry W. Hancock
Guadalupe J. Hernandez
James L. Houser
Richard G. Isenhart
Ricky G. Jacks
Joe E. Jones
Damir Kocijan
Robert T. Lantry
John W. Laskey
Kenneth Liuzza
Samson B. Margison
Michael W. McClain
Terrence L. McKinney
Dennis N. McQuiston
Garth R. Mero
Ronald C. Morris
Kenneth E. Parrott
Charles R. Patten
Raymond E. Royer
Randal C. Schmude
Steven M. Scholfield
Dennis J. Smith
David C. Stitt
Kevin L. Truxell
Earl M. Vaughan
Bruce A. Walker
Harold R. Wallace
Lee A. Wiltjer
John H. Wisner
Theron L. Wood

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 44 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 65 FR 78256; 66 FR 1631; 71 FR 63379; 72 FR 1050). Each of these 44 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the

vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 21, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 44 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 12, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–30389 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2008–0054]

Notice of Availability of Guidance on the Application of 49 U.S.C. 5324(c), Railroad Corridor Preservation, and Request for Comments

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice by the Federal Transit Administration (FTA) announces the availability of proposed guidance on the application of a provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) concerning the acquisition of railroad right-of-way for transit projects. The guidance explains FTA's interpretation of the provision, which allows the acquisition of pre-existing railroad right-of-way, under certain conditions, before the completion of the environmental review for a transit project that would use the right-of-way. FTA requests comments on this guidance, which is available on the U.S. Government electronic docket site and on the FTA Web site.

DATES: Comments must be received by January 21, 2009. Comments filed after the deadline will be considered to the extent practicable.

ADDRESSES: You must include the agency name (Federal Transit Administration) and the docket number (FTA–2008–0054) with your comments. To ensure your comments are not entered into the docket more than once, please submit comments, identified by the docket number [FTA–2008–0054], by only one of the following methods:

1. *Web site:* The U.S. Government electronic docket site is *http://www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number FTA–2008–0054.

2. *Fax:* Telefax comments to (202) 493–2251.

3. *Mail:* Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590.

4. *Hand Delivery:* Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Ossi, Office of Planning and Environment (TPE–30), 202–366–1613, or Christopher VanWyk, Office of Chief Counsel (TCC–30), 202–366–1733, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 3024 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) added a new provision at 49 U.S.C. 5324(c) that allows a grant applicant, under conditions that may be specified by the Secretary of Transportation, to acquire existing railroad right-of-way prior to the completion of the environmental review of the transportation project(s) that will eventually use that right-of-way. Under authority delegated by the Secretary, FTA has developed proposed guidance that would (1) specify the conditions under which this provision may be used and (2) give guidance on applying that provision to specific situations. We request your comments on the guidance, which is available in the U.S. Government's electronic docket site at *http://www.regulations.gov* under docket number FTA–2008–0054 and on the FTA Web site at *http://www.fta.dot.gov* under ''Planning and Environment.'' FTA will respond to comments received on this Notice in a second **Federal Register** notice to be published after the close of the comment period. That second notice is expected to announce the availability of final guidance that reflects the changes implemented as a result of comments received.

Issued on: December 16, 2008.

Sherry E. Little,

Acting Administrator.

[FR Doc. E8–30372 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Notice of Meeting Cancellation of the Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation With China

AGENCY: Office of the Special Envoy to China and the SED, Treasury.

ACTION: Notice of meeting cancellation.

SUMMARY: The Department of Treasury's Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation with China did not convene its first meeting on Monday, December 1, 2008 due to scheduling conflicts.

FOR FURTHER INFORMATION CONTACT: Casey Delhotal, Environmental and Economic Policy Advisor to the SED, Department of Treasury, 1500 Pennsylvania Avenue, NW., Washington DC 20220, at (202) 622–6780.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, section 10(a), and the regulations thereunder, Katherine Casey Delhotal, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee meeting did not convene its first meeting on Monday, December 1, 2008 due to scheduling conflicts.

Dated: December 11, 2008.

Lindsay Valdeon,

Deputy Executive Secretary, Treasury Department.

[FR Doc. E8–30352 Filed 12–19–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–64, Foreign Tax Credit and Other Guidance under Section 965.

DATES: Written comments should be received on or before February 20, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit and Other Guidance under Section 965.

OMB Number: 1545–1957.

Form Number: Notice 2005–64.

Abstract: This notice supplements the guidance set forth in Notice 2005–10, 2005–6 I.R.B. 474, which primarily addressed the requirements for a domestic reinvestment plan described in section 965(b)(4), and Notice 2005–38, 2005–22 I.R.B. 1100, which primarily addressed the limitations described in section 965(b)(1), (2), and (3) on the amount of dividends eligible for the dividends received deduction under section 965(a), including the effects of certain acquisitions, dispositions, and similar transactions on those limitations. This notice sets forth guidance on various issues arising under section 965, including issues relating to the foreign tax credit and minimum tax credit, expense allocation and apportionment, and currency translation.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–30285 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–15, section 103–Remedial Payment Closing Agreement Program.

DATES: Written comments should be received on or before February 20, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or

through the Internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Section 103–Remedial Payment Closing Agreement Program.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Abstract: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 144, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds to establish the closing agreement amount.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal government, and not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 8, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–30305 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209709–94, TD 8865 (final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209709–94 (TD 8865), Amortization of Intangible Property (§ 1.197–2).

DATES: Written comments should be received on or before February 20, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *(Carolyn.N.Brown@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Amortization of Intangible Property.

OMB Number: 1545–1671.

Regulation Project Number: REG–209709–94 (TD 8865).

Abstract: These regulations apply to property acquired after January 25, 2000. Regulations to implement section 197(e)(4)(D) are applicable August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, for property acquired after July 25, 1991, if a valid retroactive election has been made under § 1.197–1T).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 9, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–30307 Filed 12–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allows the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 38.629), the allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The law provides a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing and paying the allowance, and the amount of the allowance payable for qualifying interments that occur during calendar year 2009.

FOR FURTHER INFORMATION CONTACT: Joan Jefferies, Budget and Finance Service (41B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–461–6742 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and (4) and Public Law 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2009 is the average cost of Government-furnished graveliners in fiscal year 2008, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $263.00 for fiscal year 2008.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.00 for calendar year 2009.

The allowance payable for qualifying interments occurring during calendar year 2009, therefore, is $254.00.

Approved: December 16, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–30423 Filed 12–19–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Gulf War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Gulf War Veterans will hold a meeting on January 14–15, 2009. The Committee will meet on January 14 in Building 100, Room BB108 at the VA Puget Sound Health Care System, 1660 South Columbian Way, Seattle, Washington.

The purpose of the Committee is to provide advice and recommendations to the Secretary of Veterans Affairs on issues that are unique to veterans who served in the Southwest Asian theater of operations during 1990–1991 period of the Gulf War.

On January 14, the Committee will meet in open session from 9 a.m. until 4 p.m. and will hear from healthcare officials from the Post-Deployment Integrated Care Initiative and the Multiple Sclerosis Centers of Excellence as well as neurologists specializing in Amyotrophic Lateral Sclerosis. A representative from the Washington State Military Department Joint Headquarters and the President of the Veterans of Modern Warfare will also speak with the Committee. Additionally, the Committee will meet with a panel of Gulf War veterans who reside in the Seattle area. Gulf War veterans living in Seattle and the surrounding area who served in the Southwest Asia theater of operations during 1990–1991 wishing to participate in the panel should contact Lelia Jackson at (202) 461–5758 or via e-mail at *lelia.jackson@va.gov*. The meeting will be closed to the public from 4 p.m. until 5 p.m. in order to protect patient privacy as the Committee tours the VA Puget Sound Health Care System facility. Closing the meeting is in compliance with requirements of 5 U.S.C. 552b(c)(6).

On January 15, the Committee will visit the Seattle VA Regional Office, Seattle Vet Center and one of the homeless shelters in the grant and per diem program. This session will be closed to the public to protect patient privacy. Closing the meeting is in compliance with requirements of 5 U.S.C. 552b(c)(6). The Committee will reconvene in the Carlsbad Room at the Crowne Plaza Seattle, 1113 Sixth Avenue, Seattle, Washington, from 3:30 p.m. until 5:30 p.m. in an open session to review and discuss the Committee's activities.

Public comments will be received on January 14 from 2:15 p.m. until 2:45 p.m. Individuals wishing to speak must register not later than January 8 by contacting Ms. Jackson and by submitting 1–2 page summaries of their comments for inclusion in the official record. Public comments will be limited to five minutes each. A sign-in sheet will be available. Members of the public may also submit written statements for the Committee's review to the Advisory Committee on Gulf War Veterans, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Interested parties may also listen in by teleconferencing into the meeting. The toll-free teleconference line will be open from 9 a.m. until 4 p.m. (Pacific Standard Time) on January 14. To register for the teleconference, please contact Ms. Jackson.

Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: December 11, 2008.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–30422 Filed 12–19–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Rehabilitation Research and Development Service Scientific Merit Review Board will meet from 8 a.m. until 5:30 p.m. each day as indicated

below: January 27–28, 2009—Hilton Garden Inn Hotel, Washington, DC., March 2–3, 2009—Marriott Crystal Gateway, Arlington, VA.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meetings will be open to the public for the January 27 and March 2 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meetings will be closed as follows for the Board's review of research and development applications: January 27 from 9 a.m. to 5:30 p.m.; January 28 from 8 a.m. to 5:30 p.m.; March 2 from 9 a.m. to 5:30 p.m.; March 3 from 8 a.m. to 5:30 p.m.

The reviews involve oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts. Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open sessions should contact Terrilynn Carlton, Designated Federal Officer, Portfolio Manager, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 461–1757.

Dated: December 16, 2008.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–30425 Filed 12–19–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
December 22, 2008

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 20, 25, et al.
Tax Return Preparer Penalties Under Sections 6694 and 6695; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, 301, and 602

[TD 9436]

RIN 1545–BG83

Tax Return Preparer Penalties Under Sections 6694 and 6695

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (Code) and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The final regulations affect tax return preparers and provide guidance regarding the amended provisions.

DATES: *Effective Date:* These regulations are effective on December 22, 2008.

Applicability Date: For dates of applicability, see §§ 1.6060–1(d), 1.6107–1(e), 1.6109–2(d), 1.6694–1(g), 1.6694–2(f), 1.6694–3(g), 1.6694–4(d), 1.6695–1(g), 1.6695–2(d), 1.6696–1(k), 20.6060–1(b), 20.6107–1(b), 20.6109–1(b), 20.6694–1(b), 20.6694–2(b), 20.6694–3(b), 20.6694–4(b), 20.6695–1(b), 20.6696–1(b), 20.7701–1(b), 25.6060–1(b), 25.6107–1(b), 25.6109–1(b), 25.6694–1(b), 25.6694–2(b), 25.6694–3(b), 25.6694–4(b), 25.6695–1(b), 25.6696–1(b), 25.7701–1(b), 26.6060–1(b), 26.6107–1(b), 26.6109–1(b), 26.6694–1(b), 26.6694–2(b), 26.6694–3(b), 26.6694–4(b), 26.6695–1(b), 26.6696–1(b), 26.7701–1(b), 31.6060–1(b), 31.6107–1(b), 31.6109–2(b), 31.6694–1(b), 31.6694–2(b), 31.6694–3(b), 31.6694–4(b), 31.6695–1(b), 31.6696–1(b), 31.7701–1(b), 40.6060–1(b), 40.6107–1(b), 40.6109–1(b), 40.6694–1(b), 40.6694–2(b), 40.6694–3(b), 40.6694–4(b), 40.6695–1(b), 40.6696–1(b), 40.7701–1(b), 41.6060–1(b), 41.6107–1(b), 41.6109–2(b), 41.6694–1(b), 41.6694–2(b), 41.6694–3(b), 41.6694–4(b), 41.6695–1(b), 41.6696–1(b), 41.7701–1(b), 44.6060–1(b), 44.6107–1(b), 44.6109–1(b), 44.6694–1(b), 44.6694–2(b), 44.6694–3(b), 44.6694–4(b), 44.6695–1(b), 44.6696–1(b), 44.7701–1(b), 53.6060–1(b), 53.6107–1(b), 53.6109–1(b), 53.6694–1(b), 53.6694–2(b), 53.6694–3(b), 53.6694–4(b), 53.6695–1(b), 53.6696–1(b), 53.7701–1(b), 54.6060–1(b), 54.6107–1(b), 54.6109–1(b), 54.6694–1(b), 54.6694–2(b), 54.6694–3(b), 54.6694–4(b), 54.6695–1(b), 54.6696–1(b), 54.7701–1(b), 55.6060–1(b), 55.6107–1(b), 55.6109–1(b), 55.6694–1(b), 55.6694–2(b), 55.6694–3(b), 55.6694–4(b), 55.6695–1(b), 55.6696–1(b), 55.7701–1(b), 56.6060–1(b), 56.6107–1(b), 56.6109–1(b), 56.6694–1(b), 56.6694–2(b), 56.6694–3(b), 56.6694–4(b), 56.6695–1(b), 56.6696–1(b), 56.7701–1(b), 156.6060–1(b), 156.6107–1(b), 156.6109–1(b), 156.6694–1(b), 156.6694–2(b), 156.6694–3(b), 156.6694–4(b), 156.6695–1(b), 156.6696–1(b), 156.7701–1(b), 157.6060–1(b), 157.6107–1(b), 157.6109–1(b), 157.6694–1(b), 157.6694–2(b), 157.6694–3(b), 157.6694–4(b), 157.6695–1(b), 157.6696–1(b), 157.7701–1(b), and 301.7701–15(g).

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910, and Matthew S. Cooper, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1231. The collections of information in this final regulation are in §§ 1.6060–1(a)(1), 1.6107–1, 1.6694–2(d)(3), 20.6060–1(a)(1), 20.6107–1, 25.6060–1(a)(1), 25.6107–1, 26.6060–1(a)(1), 26.6107–1, 31.6060–1(a)(1), 31.6107–1, 40.6060–1(a)(1), 40.6107–1, 41.6060–1(a)(1), 41.6107–1, 44.6060–1(a)(1), 44.6107–1, 53.6060–1(a)(1), 53.6107–1, 54.6060–1(a)(1), 54.6107–1, 55.6060–1(a)(1), 55.6107–1, 56.6060–1(a)(1), 56.6107–1, 156.6060–1(a)(1), 156.6107–1, 157.6060–1(a)(1), and 157.6107–1. This information is necessary to make the record of the name, taxpayer identification number, and principal place of work of each tax return preparer, make each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under section 6694. The collection of information is required to comply with the provisions of section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The likely respondents are tax return preparers and their employers.

Estimated total annual reporting burden: 10,679,320 hours.

Estimated average annual burden per respondent: 15.6 hours.

Estimated number of respondents: 684,268.

Estimated frequency of responses: 127,801,426.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Generation-Skipping Transfer Tax Regulations (26 CFR part 26), the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), the Highway Use Tax Regulations, (26 CFR part 41), the Wagering Tax Regulations (26 CFR part 44), the Foundation and Similar Excise Tax Regulations (26 CFR part 53), the Pension Excise Tax Regulations (26 CFR part 54), the Excise Tax on Real Estate Investment Trusts and Regulated Investment Companies Regulations (26 CFR part 55), the Public Charity Excise Tax Regulations (26 CFR part 56), the Excise Tax on Greenmail Regulations (26 CFR part 156), the Excise Tax on Structured Settlement Factoring Transactions Regulations (26 CFR part 157), and the Regulations on Procedure and Administration (26 CFR part 301) implementing the amendments to tax return preparer penalties under sections 6694 and 6695 (and the related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36)) made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Title VIII–B of Public Law 110–28 (121 Stat. 190) (May 25, 2007) (the 2007 Act) and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Public Law 110–343 (122 Stat. 3765) (October 3, 2008) (the 2008 Act).

Section 8246 of the 2007 Act amended sections 6694 and 7701(a)(36) and made conforming changes to other Code provisions to make tax return preparer penalties applicable to a

broader range of tax returns and claims for refund. The 2007 Act's amendments to section 6694 also changed the standards of conduct that tax return preparers must meet in order to avoid imposition of penalties in the event that a return prepared results in an understatement of tax. For undisclosed positions, the 2007 Act replaced the ''realistic possibility'' standard with a standard requiring the tax return preparer to have a ''reasonable belief that the position would more likely than not be sustained on its merits.'' For disclosed positions, the 2007 Act replaced the ''not-frivolous'' standard with a standard requiring the tax return preparer to have a ''reasonable basis'' for the tax treatment of the position.

The 2007 Act also increased the first-tier penalty under section 6694(a) from $250 to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim for refund with respect to which the penalty was imposed. In addition, the 2007 Act increased the second-tier penalty under section 6694(b) from $1,000 to the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer. The amendments made by the 2007 Act were effective for tax returns prepared after the date of enactment, May 25, 2007.

The Treasury Department and the IRS released Notice 2008–13 (2008–3 IRB 282) on December 31, 2007, to provide interim guidance under the 2007 Act. Additional guidance was simultaneously provided in Notice 2008–12 (2008–3 IRB 280) with respect to the implementation of the tax return preparer signature requirement of section 6695(b), and in Notice 2008–11 (2008–3 IRB 279), which clarified the earlier transition relief provided in Notice 2007–54 (2007–27 IRB 12 (July 2, 2007)). Notice 2008–46 (2008–18 IRB 868) was released on April 16, 2008, to add certain returns and documents to Exhibits 1, 2, and 3 of Notice 2008–13.

On June 17, 2008, the Treasury Department and the IRS published in the **Federal Register** (73 FR 34560) proposed amendments to the regulations (REG–129243–07) reflecting amendments made by the 2007 Act and comments received on the notices. A public hearing was held on these proposals on August 18, 2008. Written public comments responding to the proposed regulations were received.

On October 3, 2008, section 506 of the 2008 Act modified the standards of conduct that tax return preparers must meet in order to avoid imposition of the section 6694(a) penalty. Specifically, the 2008 Act changed the standard for undisclosed positions from ''reasonable belief that the position more likely than not will be sustained on the merits'' to ''substantial authority for the position.'' The 2008 Act maintained the ''reasonable basis'' standard for disclosed positions. If a position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, it must be ''reasonable to believe that the position more likely than not will be sustained on the merits.'' The amendments made by the 2008 Act are retroactively effective for tax returns prepared after May 25, 2007, except that the special rules applicable to positions with respect to tax shelters and reportable transactions to which section 6662A applies are effective for tax returns or claims for refund prepared for tax years ending after October 3, 2008, the date of enactment of the 2008 Act.

After consideration of the public comments and the amendments made by the 2008 Act, the proposed regulations are adopted as revised by this Treasury decision. Section 1.6694–2 of these final regulations does not provide substantive guidance reflecting amendments to the Code made by the 2008 Act. Rather, the Treasury Department and the IRS are reserving § 1.6694–2(c) in these final regulations and are simultaneously issuing a notice in the Internal Revenue Bulletin providing interim guidance on the amendments to the Code made by the 2008 Act. With these final regulations, the Treasury Department and the IRS are also simultaneously issuing a revenue procedure in the Internal Revenue Bulletin that specifically identifies the returns and claims for refund subject to penalty under sections 6694 and 6695.

Summary of Comments and Explanation of Revisions

Over 30 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection upon request. A number of these comments are summarized in this preamble. The changes included in these final regulations are discussed in order of the Code sections to which they relate.

In accordance with the 2007 Act, these final regulations amend existing regulations defining tax return preparers, which were previously limited to income tax return preparers, to broaden the scope of that definition to include preparers of estate, gift, and generation-skipping transfer tax returns, employment tax returns, excise tax returns, and returns of exempt organizations. These final regulations also revise current regulations to amend the standards of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694. In addition, these final regulations reflect changes to the computation of the section 6694 tax return preparer penalty made by the 2007 Act. These final regulations also amend current regulations under the penalty provisions of section 6695 to conform them with changes made by the 2007 Act expanding the scope of that statute beyond income tax returns. These final regulations are applicable to returns and claims for refund filed (and advice given) after December 31, 2008.

Furnishing of Copy of the Tax Return and Retaining Copy

The final regulations adopt the proposed amendments to § 1.6107–1 regarding the requirement of a signing tax return preparer to furnish a copy of the completed tax return to the taxpayer and also to retain a copy, with modification.

One commentator requested that the final regulations make clear that a tax return preparer may provide copies of tax returns to taxpayers in either hard copy or electronic formats. The Treasury Department and the IRS recognize that because many returns are prepared and filed electronically and consist of electronic data, it may be unclear what is an acceptable copy of a return that must be furnished to the taxpayer. Upon further consideration, the Treasury Department and the IRS agree that clarification is necessary. Under § 1.6107–1(a) of the final regulations, the tax return preparer must provide a complete copy of the return filed with the IRS to the taxpayer in any medium, including electronic, that is acceptable to both the taxpayer and the return preparer. In the case of an electronically-filed return, a complete copy of a taxpayer's return consists of the electronic portion of the return, including all schedules, forms, pdf attachments, and jurats, that was filed with the IRS. The copy provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine which schedules, forms, electronic files, and other supporting materials have been filed with the return. The copy, however, need not contain the identification number of the tax return preparer. The electronic portion of the return can be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries

must reference the line numbers or descriptions on an official form.

The same commentator requested that the final regulations specifically provide that the copy of the tax return retained by tax return preparers may be retained electronically. The Treasury Department and the IRS, however, have concluded that revising the existing regulations to include this rule is not necessary. Existing revenue procedures address the maintenance of business records through use of electronic storage systems. See, for example, Rev. Proc. 97–22, 1997–1 CB 652. Tax return preparers may retain copies of tax returns in accordance with existing revenue procedures to comply with the final regulations.

Another commentator agreed with the general approach taken in § 1.6107–1(c) but suggested clarification of the language regarding who is a signing tax return preparer for purposes of the section 6107 requirements. Upon consideration, the Treasury Department and the IRS agree that there is a potential for the proposed language to be misconstrued. Section 1.6107–1(c) of the final regulations clarifies that for purposes of complying with the requirements of section 6107, a corporation, partnership or other organization that employs a signing tax return preparer to prepare for compensation (or in which a signing tax return preparer is compensated as a partner or member to prepare) a return of tax or claim for refund shall be treated as the sole signing tax return preparer.

Furnishing Identification Number

A commentator requested that the final regulations clarify whether the tax return preparer's identifying number must be included on the taxpayer's copy of the tax return as well as on the copy filed with the IRS. Section 6109(a)(4) provides that any return or claim for refund prepared by a tax return preparer shall bear an identification number for securing proper identification of the tax return preparer, his employer, or both as may be prescribed. Upon further consideration, the Treasury Department and the IRS agree that for identification purposes, it is only important for the tax return preparer identification number to be included on the return that is filed with the IRS. Section 1.6109–2(a) of the final regulations, therefore, is amended to provide that each filed return or claim for refund containing the identification number of the tax return preparer required to sign the return (and the identification number of the person who has an employment arrangement or association with the individual tax return preparer, if applicable) will meet the needs of the IRS. This modification will assist in maintaining the privacy of the tax return preparer's information. Additional guidance may be provided in the future regarding tax return preparer identification numbers under section 6109.

Defining the Preparer Within a Firm

The final regulations adopt the proposed amendments to § 1.6694–1(b)(1), with modification. Accordingly, the final regulations maintain a framework defining a ''preparer per position within a firm'', with the focus of any penalty on the position(s) giving rise to the understatement on the return or claim for refund and any responsible parties with respect to such position(s).

Under this framework, an individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position on the return or claim for refund giving rise to the understatement. Under § 1.6694–1(b)(1), only one person within a firm will be considered primarily responsible for each position giving rise to an understatement and, accordingly, be subject to the penalty.

Three commentators questioned whether this framework will lead to significant problems in return preparer firms, in particular whether the framework may discourage any particular person within the firm from looking at the return in whole. These commentators also questioned whether the IRS will be able to identify the responsible party if individuals at the firm attempt to identify others at the firm who may be more responsible for the position. Two other commentators, however, agreed with this framework in light of the high level of specialization that exists in modern tax practice. The Treasury Department and the IRS continue to conclude that the expansion from a ''one preparer per firm'' to a ''one preparer per position within a firm'' will further compliance and will result in more equitable administration of the tax return preparer penalty regime. This framework, therefore, is adopted in the final regulations.

Section 1.6694–1(b)(2) of the proposed regulations provided that the individual who signs the return or claim for refund as the tax return preparer generally will be considered the person within a firm who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement. This language is finalized as proposed except for some minor conforming changes.

Proposed § 1.6694–1(b)(3) established a similar rule for situations when there are one or more nonsigning tax return preparers at the same firm and either no signing tax return preparer within the firm, it is concluded that the signer is not primarily responsible for the position, or the IRS cannot conclude which individual is primarily responsible for the position for purposes of section 6694. In these situations, the proposed regulations stated that the individual within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement is the tax return preparer who is primarily responsible for the position for purposes of section 6694.

Several commentators requested that this rule for nonsigning tax return preparers not be adopted as proposed because it will lead to more harm than good. Specifically, one commentator requested the deletion of the clause ''or the IRS cannot conclude which individual (as between the signing tax return preparer and other persons within the firm) is primarily responsible for the position'' from proposed § 1.6694–1(b)(3) because a tax return preparer penalty is not appropriate when the IRS is not able to reach a conclusion as to who is primarily responsible for the conduct giving rise to the position. The other commentator recommended qualifying the rule in proposed § 1.6694–1(b)(3) with the requirement that the individual with overall supervisory responsibility for the position either possess actual knowledge of the position or fail to exercise appropriate diligence in the review of the position subject to penalty through willfulness, recklessness, or gross indifference.

Upon consideration of these comments, the Treasury Department and the IRS have revised § 1.6694–1(b)(3) to provide that if there is no signing tax return preparer for the return or claim for refund within that firm or if, after the application of § 1.6694–1(b)(2), it is concluded that the signing tax return preparer is not primarily responsible for the position, the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement generally will be considered the tax return preparer who is primarily responsible for the position for purposes of section 6694. Based upon credible information from any source, however, it may be concluded that another nonsigning tax return preparer within the firm is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement.

In response to the commentators' concerns that the default rule in proposed § 1.6694–1(b)(3) assigning liability for the penalty to the nonsigning tax return preparer may lead to more harm than good, § 1.6694–1(b)(4) of the final regulations is added. The final regulations in § 1.6694–1(b)(4) provide that, if the information presented would support a finding that either the signing tax return preparer or a nonsigning tax return preparer within a firm is primarily responsible for the position(s) giving rise to the understatement, the IRS may assess the penalty against either one of the individuals within the firm, but not both, as the primarily responsible tax return preparer. This determination will be based upon all the evidence presented and will allow for certainty regarding the identification of the primarily responsible tax return preparer within the expiration of the period of limitations on making an assessment under section 6694(a). It is expected that the IRS will assess the penalty under section 6694 under these rules against the tax return preparer with the greatest amount of responsibility for the position based upon the best information available to the IRS. The rule adopted in § 1.6694–1(b)(4) is not a rule reflecting joint and several liability for the penalty among the signing tax return preparer and nonsigning tax return preparer as the penalty may be assessed against one of these individuals, but not both.

Reliance on Information Provided

The final regulations adopt the proposed amendments to § 1.6694–1(e), with modification. Most commentators supported expanding the regulations in § 1.6694–1(e) to provide that a tax return preparer may rely in good faith and without verification on information furnished by another advisor, another tax return preparer, or other party (even if the advisor or tax return preparer is within the tax return preparer's same firm) as long as the tax return preparer does not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer, and makes reasonable inquiries if the information as furnished appears to be incorrect or incomplete.

Commentators, however, requested that the final regulations clarify that a tax return preparer may rely on ''advice'' furnished by another advisor, another tax return preparer, or other party (even if the advisor or tax return preparer is within the tax return preparer's same firm). This recommendation is adopted in § 1.6694–1(e)(1) of the final regulations. The same changes are made for conformity to the definitions of ''reasonable to believe that the position would more likely than not be sustained on its merits'' in § 1.6694–2(b)(1), ''reasonable basis'' in § 1.6694–2(d)(2) and ''reasonable cause'' in § 1.6694–2(e)(5). These modifications are consistent with the intent of the rules in the proposed regulations regarding reliance given the heightened standards imposed on tax return preparers by the 2007 and 2008 Acts and the increased complexity of the law.

Section 1.6694–1(e) of the proposed regulations also proposed a new rule providing that a tax return preparer may not rely on legal conclusions regarding Federal tax issues furnished by taxpayers. The purpose behind this proposal was the belief that in general, although it was reasonable to allow a tax return preparer to rely on facts furnished by the taxpayer in good faith without verification, the tax return preparer should not be able to rely on legal conclusions on issues when the taxpayer may not be an expert and looked to the tax return preparer to determine the legal issue for purposes of preparing the return or claim for refund.

Most commentators expressed concern, however, that tax return preparers have long relied on information that involve mixed questions of fact and law furnished by taxpayers, in addition to legal conclusions. Moreover, the commentators point out that many large entity taxpayers have in-house tax departments staffed by tax professionals who are qualified to perform research and analysis necessary to address many legal issues.

The Treasury Department and the IRS acknowledge that the proposed regulations may be unclear on how the ''no reliance on legal conclusions by taxpayers'' language in proposed § 1.6694–1(e) interacts with the language in proposed § 1.6694–2(b)(2) regarding unreasonable assumptions. Accordingly, the ''no reliance on legal conclusions by taxpayers'' is removed from § 1.6694–1(e) of the final regulations. While this phrase is removed from the text of the final regulations, the tax return preparer nevertheless must meet the diligence standards otherwise imposed by this regulation in order to rely properly on information and advice provided by taxpayers or other individuals. Tax return preparers must have no reason to believe that the taxpayer is incompetent to make these conclusions, have no knowledge that the conclusions are incorrect or incomplete, and make reasonable inquiries if the information as furnished appears to be incorrect or incomplete.

Use of Estimates

One commentator noted that the nature of accounting, upon which calculations of taxable income are based, requires the use of estimates, and urged the Treasury Department and the IRS to include a specific reference to allow the use of estimates in the final regulations. The Treasury Department and the IRS recognize that there are some circumstances when the use of reasonable estimates may be appropriate in the preparation of tax returns (see, for example, §§ 1.448–2(d), 1.451–1(a), and 1.451–5(c)(1)(ii)), and there are some circumstances in which there may be no practical alternative to the use of reasonable estimates, for example, when the taxpayer's records are destroyed accidentally or through computer failure. The Treasury Department and the IRS, however, conclude that including a general rule regarding the use of estimates in the preparer penalty regulations that could impact other substantive tax provisions is not appropriate.

Income Derived Determination in Computing Penalty Amount

The final regulations adopt the proposed amendments to § 1.6694–1(f), with minor modification. Section 1.6694–1(f) defines ''income derived (or to be derived)'' with respect to a return or claim for refund as all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

Several commentators requested clarification on this definition of ''income derived (or to be derived)'' for purposes of computing the section 6694 penalty because it is not necessarily clear what compensation is captured by this definition, which could be interpreted broadly. The final regulations maintain the same definition of ''income derived (or to be derived)'' as proposed because the Treasury Department and the IRS conclude that the other rules described in § 1.6694–1(f) provide appropriate limitations to this definition.

In response to a commentator's request, the final regulations in § 1.6694–1(f)(4) also add an example illustrating how the penalty will be computed in cases involving employees and partners who spend a portion of their time on a particular position

subject to the section 6694 penalty for which the firm earns a specific amount.

Firm Liability

The final regulations adopt the proposed amendments to §§ 1.6694–2(a)(2) and 1.6694–3(a)(2), without modification. One commentator requested examples of a firm disregarding its review procedures through willfulness, recklessness, or gross indifference in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed. The determination as to whether a firm disregards its review procedures will be made based upon all facts and circumstances. Because any example necessarily would be limited to the facts of a particular firm's review procedures, additional examples on this issue would not meaningfully add to the guidance provided in the proposed regulations.

Reasonable To Believe That More Likely Than Not

Section 1.6694–2(b) of the final regulations defines the ''reasonable to believe that the position would more likely than not be sustained on its merits'' standard that now applies to positions that are tax shelters and reportable transactions to which section 6662A applies. While the 2008 Act amendment to section 6694 includes a ''reasonable to believe'' standard rather than the ''reasonable belief'' standard used in the 2007 Act, the Treasury Department and the IRS are of the view that the two standards have the same meaning. Conforming changes are made throughout the final regulations to reflect the 2008 Act terminology.

Proposed § 1.6694–2(b)(1) provided that the ''reasonable belief that the position would more likely than not be sustained on its merits'' standard will be satisfied if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. The proposed regulations stated that whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's due diligence. Moreover, in determining the level of diligence in a particular case, the proposed regulations provided that the IRS would take into account the tax return preparer's experience with the area of tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts in the case.

Several commentators requested that the final regulations specify that the amount of due diligence required on the part of the tax return preparer should not be disproportionate to the amount of the tax liability that would be affected by the position at issue. There was also some confusion on whether the due diligence rules in the proposed regulations allowed a less educated, sophisticated, or experienced tax return preparer to escape penalty liability more easily than educated, sophisticated, or experienced tax return preparers. This was not the intent of this rule in the proposed regulations. Due diligence is only one of many factors to consider in determining whether a tax return preparer meets the ''reasonable to believe that the position would more likely than not be sustained on its merits'' standard and all of the facts and circumstances of each specific case will need to be evaluated in making this determination.

Several commentators suggested that the provisions in § 1.6694–2(d)(5) of the proposed regulations permitting tax return preparers to rely upon generally accepted administrative or industry practice in establishing reasonable cause relief from penalties under section 6694 should be extended to allow consideration of generally accepted administrative or industry practice in determining whether the ''reasonable to believe that the position would more likely than not be sustained on its merits'' standard is satisfied. These comments are not adopted in the final regulations because the Treasury Department and the IRS continue to conclude that the authorities contained in § 1.6662–4(d)(3)(iii) (or any successor provision) are the appropriate authorities to be considered in determining whether it is reasonable to believe that the position would more likely than not be sustained on its merits. The ''reasonable to believe that the position would more likely than not be sustained on its merits'' standard relates to the tax return preparer's evaluation of the merits of a return position, and the merits of a tax return position must be considered in light of established relevant legal authorities. Generally accepted administrative or industry practice are less relevant in considering the merits of a tax return position under applicable law and guidance, although they may be appropriate factors to consider in the context of a tax return preparer's reasonable cause and good faith.

Based upon a comment received, the final regulations in § 1.6694–2(b)(4) adopt the same rule as in § 1.6662–4(d)(3)(iv)(B) regarding the effect of the taxpayer's jurisdiction on meeting the appropriate standard. The Treasury Department and the IRS are of the view that it is appropriate that the same rule apply for purposes of satisfying the ''reasonable to believe that the position more likely than not be sustained on its merits'' standard. This approach supports uniform disclosure by taxpayers and tax return preparers and prevents conflicts between taxpayers and tax return preparers in complying with the federal tax laws.

Adequate Disclosure

The final regulations adopt the proposed amendments to § 1.6694–2(d)(3), with modification based upon comments received and revisions made in the 2008 Act. For a signing tax return preparer within the meaning of § 301.7701–15(b)(1), the final regulations provide that disclosure of a position for which there is a reasonable basis but for which there is not substantial authority is adequate in one of three ways. First, the position may be disclosed on a properly completed and filed Form 8275, Disclosure Statement, or Form 8275–R, Regulation Disclosure Statement, as appropriate, or on the tax return in accordance with the applicable annual revenue procedure. See Revenue Procedure 2008–14 (2008–7 IRB 435 (February 19, 2008)). Second, disclosure of the position is adequate if the tax return preparer provides the taxpayer with a prepared tax return that includes the appropriate disclosure in accordance with § 1.6662–4(f). Third, for tax returns or claims for refund that are subject to penalties other than the accuracy-related penalty for substantial understatements under sections 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. This third rule is intended to address the situation when the penalty standard applicable to the taxpayer is based on compliance with requirements other than disclosure on the return (for example, section 6662(e)). In the case of a nonsigning tax return preparer within the meaning of § 301.7701–15(b)(2), the final regulations in § 1.6694–2(d)(3)(ii) maintain the same three disclosure rules that were in the proposed regulations.

Two commentators requested clarification of the prohibition against a boilerplate disclaimer and recommended clarifying that a firm does not violate the prohibition simply by adopting a standard approach to disclosure issues. Section 1.6694–2(d)(3)(iii) of the final regulations is revised to provide that no general disclaimer is allowed with respect to the

specific facts and circumstances of the taxpayer and the position for which there is no substantial authority. Tax return preparers, and their firms, may use standard language to describe applicable law and may adopt a standard approach to disclosure issues.

One commentator stated that it is unclear what specifically must be documented by the nonsigning tax return preparer in order to avoid imposition of penalties. The final regulations are revised by clarifying that the documented advice that would constitute adequate disclosure in § 1.6694–2(d)(3)(ii)(A) with respect to a nonsigning tax return preparer's advice to a taxpayer, if the firm is advising the taxpayer, should confirm that the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity, if any, to avoid penalty through disclosure.

Similarly, in § 1.6694–2(d)(3)(ii)(B) with respect to a nonsigning preparer's advice to another tax return preparer, if providing nonsigning preparer advice to another preparer in the same firm, contemporaneous documentation should be satisfied if there is a single instance of contemporaneous documentation within the firm. If the firm is advising another preparer outside of the firm, the final regulations provide that this documentation should confirm that the preparer outside the firm has been advised that disclosure under section 6694(a) may be required.

Finally, the disclosure rules in § 1.6694–3(c)(2) of the final regulations are revised to clarify that a tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in § 1.6694–2(d)(2) and is adequately disclosed in accordance with §§ 1.6694–2(d)(3)(i)(A) or (C) or 1.6694–2(d)(3)(ii). In the case of a position contrary to a revenue ruling or notice, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the substantial authority standard described in § 1.6662–4(d) and is not with respect to a reportable transaction to which section 6662A applies. This modification ensures that tax return preparers may advise their clients to challenge an IRS ruling or notice under the appropriate circumstances.

Reasonable Cause

The final regulations in § 1.6694–2(e) adopt the proposed amendments to § 1.6694–2(e) regarding reasonable cause, with minor conforming changes.

Section 1.6694–2(e)(5) permits tax return preparers to rely upon generally accepted administrative or industry practice in establishing reasonable cause relief from penalties under section 6694. Several commentators indicated that guidance is necessary to explain how a tax return preparer should determine whether a practice is ''generally accepted'' and ''industry practice.'' The final regulations do not provide further guidance regarding these terms. An accepted administrative or industry practice will be determined based upon all facts and circumstances.

Burden of Proof

One commentator urged that the rules regarding ''burden of proof'' in tax return preparer penalty litigation cases should be either eliminated or be substantially revised to comport with section 7491. Section 7427 imposes upon the Secretary the burden of proof on the issue of whether a tax return preparer has willfully attempted in any manner to understate the liability for tax. Section 7491(c) imposes upon the Secretary the burden of production in any court proceeding with respect to the liability of any individual for a penalty. After consideration of the comment, proposed §§ 1.6694–2(f) and 1.6694–3(g) are removed from the final regulations because these other Code sections as well as case law provide the substantive rules regarding burden of proof and burden of production for penalties.

Negotiation of Check

Section 6695(f) and § 1.6695–1(f)(1) prohibit a tax return preparer from endorsing or negotiating a refund check relating to a return for which he or she is a preparer. One commentator recommended that the regulations be clarified to state specifically that a tax return preparer is not prohibited from affixing the taxpayer's name on a refund check (typically accomplished via a mechanical stamp) for the purpose of depositing the check into an account in the name of the taxpayer. This comment is adopted in § 1.6695–1(f)(1) of the final regulations.

Due Diligence for Earned Income Credit

Section 1.6695–2(b)(3) of these final regulations adopt the rules regarding a signing tax return preparer's due diligence requirements with respect to determining eligibility for the earned income credit, with minor modification. Based upon the concerns of a commentator about one of the examples in this section addressing the representation of married but separated individuals, *Example 3* in the proposed regulations is removed. The Treasury Department and the IRS agree that this example may raise conflict of interest issues and, therefore, replace the example with another example focusing on the need of the tax return preparer to ask relevant questions if a taxpayer attempts to claim a niece or nephew as a qualifying child.

Definition of Tax Return Preparer

The final regulations adopt the proposed amendments to § 301.7701–15(b)(1) and (2), with modification. Section 301.7701–15(b)(1) and (2) of the final regulations adds to the section 7701 regulations the definitions of ''signing tax return preparer'' and ''nonsigning tax return preparer.''

Several commentators requested that the final regulations expressly state who is required to sign a tax return. Section 301.7701–15(b)(1) of the final regulations is revised to provide that a signing tax return preparer is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund. Conforming changes are additionally made to § 1.6695–1(b). The definitions of nonsigning tax return preparer in § 301.7701–15(b)(2) and substantial portion in § 301.7701–15(b)(3) are generally adopted as proposed. An anti-abuse rule, however, is added in § 301.7701–15(b)(2)(i) based upon several commentators' suggestions. The anti-abuse rule provides that time spent on advice given after events have occurred, even if such time is less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement, will be taken into account if all facts and circumstances show that an individual is primarily responsible for a position taken on a return, gave advice on that position before events occurred primarily to avoid treatment as a tax return preparer subject to section 6694, and for purposes of preparing a tax return the individual confirmed the advice after events had occurred.

List of Returns Subject to Penalty

Several commentators contended that proposed § 301.7701–15(b)(4) and the accompanying revenue procedure listing the returns and claims for refund subject to the section 6694 penalty should not include information returns and should limit the definition of return to exclude documents that do not report a tax liability. Similarly, commentators requested excluding Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, Form

8038–G, Information Return for Government Purpose Tax-Exempt Bond Issues, Form 8038–GC, Consolidated Information Return for Small Tax-Exempt Government Bond Issues, and Form 5500, Annual Return/Report of Employee Benefit Plan. After consideration of the comments, the Forms 8038, 8038–G, and 8038–GC are classified in the contemporaneously issued revenue procedure with forms that will not subject the preparer to a penalty under section 6694(a), but may subject the preparer to a willful or reckless conduct penalty under section 6694(b) if the information reported on the form constitutes a substantial portion of the tax return or claim for refund and is prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund, or in reckless or intentional disregard of rules or regulations. Also, Form 8038–T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate, and Form 8038–R, Request for Recovery of Overpayment Under Arbitrage Rebate Provisions, are added to the list of forms of returns in the revenue procedure subject to the section 6694 penalties. Form 5500 remains in the same category as in Notice 2008–13.

The same commentators also raised the issue of whether the Treasury Department and the IRS should publish the list of returns and claims for refund subject to penalty under sections 6694 and 6695 in these final regulations, rather than in separate guidance in the Internal Revenue Bulletin. The Treasury Department and the IRS continue to conclude that it is appropriate to publish a revenue procedure in the Internal Revenue Bulletin. Notices 2008–12, –13, and –46, along with the previously issued proposed regulations, provided the public with notice of, and an opportunity to comment on, the forms subject to penalty.

Another commentator requested that the final regulations in both § 301.7701–15(f) and Circular 230 specifically define the terms ''in-house tax professional'' and ''employer'' and provide other guidance on the applicability of these return preparer rules to in-house counsel in Circular 230. Section 7701(a)(36) and § 301.7701–15(f)(ix) already except from the definition of tax return preparer any person who prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he or she is regularly and continuously employed. Additionally, § 301.7701–15(f)(4) of the final regulations deems an employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, to be the employee of the other corporation as well. The Treasury Department and the IRS will consider if any other changes are necessary on this issue in future revisions to § 10.34 of Circular 230.

Appraisers

Under Treasury Regulations in place since 1977 and the proposed regulations, an appraiser might be subject to penalties under section 6694 as a nonsigning tax return preparer if the appraisal is a substantial portion of the return or claim for refund and the applicable standards of care under section 6694 are not met. Several commentators have stated that appraisers should not be subject to penalties under section 6694 because they are subject to new, higher standards of conduct under section 6695A as set out in the Pension Protection Act of 2006, Public Law No. 109–280. The commentators have also urged that assessment of penalties under section 6694 against appraisers would result in imposition of a gratuitous and unnecessary layer of requirements and sanctions without any additional public policy benefit.

After consideration of the comment, the Treasury Department and the IRS continue to include appraisers in the definition of both signing and non-signing preparers, thereby providing the IRS with discretion to impose the section 6694 and 6695A penalties in the alternative against an appraiser depending on the facts and circumstances of the appraiser's conduct. The IRS, however, will not stack the penalties under sections 6694 and 6695A with respect to the same conduct. A separate regulation will provide guidance under section 6695A.

Disclosure Under Section 6103

One commentator recommended that the Treasury Department and the IRS issue regulations under section 6103 authorizing the disclosure of tax returns and return information to a tax return preparer at the tax return preparer's request upon initiation of an examination of the tax return preparer for tax return preparer penalties to the extent the returns and return information are relevant and material to the tax return preparer examination. The Treasury Department and the IRS conclude that no further guidance on this issue in these regulations is necessary because section 6103(h)(4) already authorizes the disclosure of returns and return information by the Government in federal or state, judicial or administrative tax proceedings if the disclosure meets an item or transaction test and the third-party return or return information is directly related to the resolution of an issue in the case.

Appeal Rights

A number of individual commentators questioned whether the proposed regulations would remove the administrative appeal rights available to tax return preparers who are subject to penalty under section 6694. Under Treasury Regulations in place since 1991, the IRS will send a 30-day letter to the tax return preparer notifying the tax return preparer of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration and a final administrative determination by the IRS concerning the proposed assessment prior to assessment of a penalty under section 6694 (unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment). If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer. These appeal rights are maintained in § 1.6694–4(a) of the final regulations.

Applicability Dates

To eliminate any adverse impact that the adoption of these final regulations could have on pending or recently filed returns, these final regulations will apply to returns and claims for refund filed, and advice provided, after December 31, 2008.

Availability of IRS Documents

The IRS notices referred to in this preamble are published in the Internal Revenue Bulletin and are available at *http://www.irs.gov.*

Effect on Other Documents

The following publications are obsolete as of January 1, 2009:

Notice 2007–54 (2007–27 IRB 12).
Notice 2008–11 (2008–3 IRB 279).
Notice 2008–12 (2008–3 IRB 280).
Notice 2008–13 (2008–3 IRB 282).
Notice 2008–46 (2008–18 IRB 868).

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency issues a rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the final rulemaking will not have a significant economic impact on a substantial number of small entities.

The final rules affect tax return preparers. The IRS estimates there are 38,566 tax return preparation firms and 260,338 self-employed tax return preparers that qualify as small entities. Therefore, the IRS has determined that these final rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the final rule will not be significant. The statute and final regulations would require entities that employ tax return preparers to retain a record of the name, taxpayer identification number and principal place of work of each tax return preparer employed. The IRS estimates that this would not require purchase of additional software and would take five minutes per tax return preparer employed. The statute and final regulations would also require tax return preparers to retain a complete copy of a return (or claim for refund) or a list of the name, taxpayer identification number and taxable year for each return (or claim for refund) and the name of the tax return preparer required to sign the return or claim for refund. Many tax return preparers have copying machines or scanners and already make copies of the returns prepared, and the IRS estimates this would not require the purchase of additional equipment. The IRS estimates that it would take an average of five minutes to make copies or prepare a record of the returns or claims for refund prepared. Accordingly, the burden on employers of tax return preparers to make a record of the name, taxpayer identification number, and principal place of work of each employed tax return preparer, and a copy of each return or claim for refund prepared, or a record, is insignificant.

The final regulations also conform the standards of conduct for the tax return preparer penalties under section 6694(a) to the provisions of the 2007 and 2008 Acts. Tax return preparers already enroll in educational seminars or training programs to keep up to date with the latest changes to the Code, and the provisions of the 2007 and 2008 Acts and the regulations generally will be part of that training.

Based on these facts, it is certified that the collection of information contained in these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Matthew S. Cooper and Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad Retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Part 44

Excise taxes, Gambling, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 1.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 1.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 1.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 2.** Section 1.6060–1 is amended by revising the section heading and paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 1.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* (1) Each person who employs one or more signing tax return preparers to prepare any return of tax or claim for refund of tax, other than for the person, at any time during a return period shall satisfy the requirements of section 6060 of the Internal Revenue Code by—

(i) Retaining a record of the name, taxpayer identification number, and

principal place of work during the return period of each tax return preparer employed by the person at any time during that period; and

(ii) Making that record available for inspection upon request by the Commissioner.

(2) The record described in this paragraph (a) must be retained and kept available for inspection for the 3-year period following the close of the return period to which that record relates.

(3) The person may choose any form of documentation to be used under this section as a record of the signing tax return preparers employed during a return period. The record, however, must disclose on its face which individuals were employed as tax return preparers during that period.

(4) For the definition of the term ''signing tax return preparer'', see § 301.7701–15(b)(1) of this chapter. For the definition of the term ''return period'', see paragraph (b) of this section.

(5)(i) For purposes of this section, any individual who, in acting as a signing tax return preparer, is not employed by another tax return preparer shall be treated as his or her own employer. Thus, a sole proprietor shall retain and make available a record with respect to himself (or herself) as provided in this section.

(ii) A partnership shall, for purposes of this section, be treated as the employer of the partners of the partnership and shall retain and make available a record with respect to the partners and others employed by the partnership as provided in this section.

* * * * *

(c) *Penalty.* For the civil penalty for failure to retain and make available a record of the tax return preparers employed during a return period as required under this section, or for failure to include an item in the record required to be retained and made available under this section, see § 1.6695–1(e).

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 3.** Section 1.6107–1 is revised to read as follows:

§ 1.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *Furnishing copy to taxpayer*—(1) A person who is a signing tax return preparer of any return of tax or claim for refund of tax under the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer (or nontaxable entity) not later than the time the return or claim for refund is presented for the signature of the taxpayer (or nontaxable entity). The signing tax return preparer may, at its option, request a receipt or other evidence from the taxpayer (or nontaxable entity) sufficient to show satisfaction of the requirement of this paragraph (a).

(2) The tax return preparer must provide a complete copy of the return or claim for refund filed with the IRS to the taxpayer in any media, including electronic media, that is acceptable to both the taxpayer and the tax return preparer. In the case of an electronically filed return, a complete copy of a taxpayer's return or claim for refund consists of the electronic portion of the return or claim for refund, including all schedules, forms, pdf attachments, and jurats, that was filed with the IRS. The copy provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine what schedules, forms, electronic files, and other supporting materials have been filed with the return. The copy, however, need not contain the identification number of the paid tax return preparer. The electronic portion of the return or claim for refund may be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries must reference the line numbers or descriptions on an official form.

(3) For electronically filed Forms 1040EZ, ''Income Tax Return for Single Filers and Joint Filers With No Dependents,'' and Form 1040A, ''U.S. Individual Income Tax Return,'' filed for the 2009, 2010 and 2011 taxable years, the information may be provided on a replica of a Form 1040, ''U.S. Individual Income Tax Return'', that provides all of the information. For other electronically filed returns, the information may be provided on a replica of an official form that provides all of the information.

(b) *Copy or record to be retained.* (1) A person who is a signing tax return preparer of any return or claim for refund shall—

(i)(A) Retain a completed copy of the return or claim for refund; or

(B) Retain a record, by list, card file, or otherwise of the name, taxpayer identification number, and taxable year of the taxpayer (or nontaxable entity) for whom the return or claim for refund was prepared, and the type of return or claim for refund prepared;

(ii) Retain a record, by retention of a copy of the return or claim for refund, maintenance of a list, card file, or otherwise, for each return or claim for refund presented to the taxpayer (or nontaxable entity), of the name of the individual tax return preparer required to sign the return or claim for refund pursuant to § 1.6695–1(b); and

(iii) Make the copy or record of returns and claims for refund and record of the individuals required to sign available for inspection upon request by the Commissioner.

(2) The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for refund was presented for signature to the taxpayer (or nontaxable entity). In the case of a return that becomes due (with extensions, if any) during a return period following the return period during which the return was presented for signature, the material shall be retained and kept available for inspection for the 3-year period following the close of the later return period in which the return became due. For the definition of ''return period,'' see section 6060(c). If the person subject to the record retention requirement of this paragraph (b) is a corporation or a partnership that is dissolved before completion of the 3-year period, then all persons who are responsible for the winding up of the affairs of the corporation or partnership under state law shall be subject, on behalf of the corporation or partnership, to these record retention requirements until completion of the 3-year period. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors or general partners shall be subject, on behalf of the corporation or partnership, to the record retention requirements of this paragraph (b). For purposes of the penalty imposed by section 6695(d), such designated persons shall be deemed to be the tax return preparer and will be jointly and severally liable for each failure.

(c) *Tax return preparer.* For the definition of ''signing tax return preparer,'' see § 301.7701–15(b)(1) of this chapter. For purposes of applying this section, a corporation, partnership or other organization that employs a signing tax return preparer to prepare for compensation (or in which a signing tax return preparer is compensated as a partner or member to prepare) a return of tax or claim for refund shall be treated as the sole signing tax return preparer.

(d) *Penalties.* (1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayers (or nontaxable entity) as required under paragraphs (a) of this section, see section 6695(a) and § 1.6695–1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a record as required under paragraphs (b) of this section, see section 6695(d) and § 1.6695–1(d).

(e) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 4.** Section 1.6109–2 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 1.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.

(a) *Furnishing identifying number.* (1) Each filed return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, if there is an employment arrangement or association between the individual tax return preparer and another person (except to the extent the return prepared is for the person), the identifying number of the other person must also appear on the filed return or claim for refund. For the definition of the term ''tax return preparer,'' see section 7701(a)(36) and § 301.7701–15 of this chapter.

(2) The identifying number of an individual tax return preparer is that individual's social security account number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a person (whether an individual or entity) who employs or associates with an individual tax return preparer described in paragraph (a)(2) of this section to prepare the return or claim for refund (other than a return prepared for the person) is the person's employer identification number.

* * * * *

(d) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008. For returns or claims for refund filed before January 1, 2000, see § 1.6109–2A(a).

■ **Par. 5.** Section 1.6694–0 is revised to read as follows:

§ 1.6694–0 Table of contents.

This section lists the captions that appear in §§ 1.6694–1 through 1.6694–4.

§ 1.6694–1 Section 6694 penalties applicable to tax return preparers.
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(3) Responsibility of nonsigning tax return preparer.
(4) Responsibility of signing and nonsigning tax return preparer.
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(c) Understatement of liability.
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§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.
(a) In general.
(1) Proscribed conduct.
(2) Special rule for corporations, partnerships, and other firms.
(b) Willful attempt to understate liability.
(c) Reckless or intentional disregard.
(d) Examples.
(e) Rules or regulations.
(f) Section 6694(b) penalty reduced by section 6694(a) penalty.
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§ 1.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.
(a) In general.
(b) Tax return preparer must bring suit in district court to determine liability for penalty.
(c) Suspension of running of period of limitations on collection.
(d) Effective/applicability date.

■ **Par. 6.** Section 1.6694–1 is revised to read as follows:

§ 1.6694–1 Section 6694 penalties applicable to tax return preparers.

(a) *Overview*—(1) *In general.* Sections 6694(a) and (b) impose penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return (including an amended or adjusted return) or claim for refund. For positions other than those with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability that is due to an undisclosed position for which the tax return preparer did not have substantial authority or due to a disclosed position for which there is no reasonable basis. For positions with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) or reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability for which it is not reasonable to believe that the position would more likely than not be sustained on its merits. The section 6694(b) penalty is imposed in an amount equal to the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of liability with respect to tax that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. Refer to § 1.6694–2 for rules relating to the

penalty under section 6694(a). Refer to § 1.6694–3 for rules relating to the penalty under section 6694(b).

(2) *Date return is deemed prepared.* For purposes of the penalties under section 6694, a return or claim for refund is deemed prepared on the date it is signed by the tax return preparer. If a signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter fails to sign the return, the return or claim for refund is deemed prepared on the date the return or claim is filed. See § 1.6695–1 of this section. In the case of a nonsigning tax return preparer within the meaning of § 301.7701–15(b)(2) of this chapter, the relevant date is the date the nonsigning tax return preparer provides the tax advice with respect to the position giving rise to the understatement. This date will be determined based on all the facts and circumstances.

(b) *Tax return preparer*—(1) *In general.* For purposes of this section, ''tax return preparer'' means any person who is a tax return preparer within the meaning of section 7701(a)(36) and § 301.7701–15 of this chapter. An individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. See § 301.7701–15(b)(3). There is only one individual within a firm who is primarily responsible for each position on the return or claim for refund giving rise to an understatement. In the course of identifying the individual who is primarily responsible for the position, the Internal Revenue Service (IRS) may advise multiple individuals within the firm that it may be concluded that they are the individual within the firm who is primarily responsible. In some circumstances, there may be more than one tax return preparer who is primarily responsible for the position(s) giving rise to an understatement if multiple tax return preparers are employed by, or associated with, different firms.

(2) *Responsibility of signing tax return preparer.* If there is a signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter within a firm, the signing tax return preparer generally will be considered the person who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement unless, based upon credible information from any source, it is concluded that the nonsigning tax return preparer is not primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. In that case, a nonsigning tax return preparer within the signing tax return preparer's firm (as determined in paragraph (b)(3) of this section) will be considered the tax return preparer who is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement.

(3) *Responsibility of nonsigning tax return preparer.* If there is no signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter for the return or claim for refund within the firm or if, after the application of paragraph (b)(2) of this section, it is concluded that the signing tax return preparer is not primarily responsible for the position, the nonsigning tax return preparer within the meaning of § 301.7701–15(b)(2) of this chapter within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement generally will be considered the tax return preparer who is primarily responsible for the position for purposes of section 6694 unless, based upon credible information from any source, it is concluded that another nonsigning tax return preparer within that firm is primarily responsible for the position(s) on the return or claim for refund giving rise to the understatement.

(4) *Responsibility of signing and nonsigning tax return preparer.* If the information presented would support a finding that, within a firm, either the signing tax return preparer or a nonsigning tax return preparer is primarily responsible for the position(s) giving rise to the understatement, the penalty may be assessed against either one of the individuals, but not both, as the primarily responsible tax return preparer.

(5) *Tax return preparer and firm responsibility.* To the extent provided in §§ 1.6694–2(a)(2) and 1.6694–3(a)(2), an individual and the firm that employs the individual, or the firm of which the individual is a partner, member, shareholder, or other equity holder, both may be subject to penalty under section 6694 with respect to the position(s) on the return or claim for refund giving rise to an understatement. If an individual (other than the sole proprietor) who is employed by a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a ''firm'' for purposes of this paragraph (b).

(6) *Examples.* The provisions of paragraph (b) of this section are illustrated by the following examples:

Example 1. Attorney A provides advice to Client C concerning the proper treatment of an item with respect to which all events have occurred on C's tax return. In preparation for providing that advice, A seeks advice regarding the proper treatment of the item from Attorney B, who is within the same firm as A, but A is the attorney who signs C's return as a tax return preparer. B provides advice on the treatment of the item upon which A relies. B's advice is reflected on C's tax return but no disclosure was made in accordance with § 1.6694–2(d)(3). The advice constitutes preparation of a substantial portion of the return within the meaning of § 301.7701–15(b)(3). The IRS later challenges the position taken on the tax return, giving rise to an understatement of liability. For purposes of the regulations under section 6694, A is initially considered the tax return preparer with respect to C's return, and the IRS advises A that A may be subject to the penalty under section 6694 with respect to C's return. Based upon information received from A or another source, it may be concluded that B, rather than A, had primary responsibility for the position taken on the return that gave rise to the understatement and may be subject to penalty under section 6694 instead of A.

Example 2. Same as *Example 1,* except that neither Attorney A nor any other source produce credible information that Attorney B had primary responsibility for the position on the return giving rise to an understatement. Attorney A is the tax return preparer who may be subject to penalty under section 6694 with respect to C's return.

Example 3. Same as *Example 1,* except that neither Attorney A nor any other attorney within A's firm signs Client C's return as a tax return preparer. Attorney B is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position giving rise to an understatement. Accordingly, B is the tax return preparer who is primarily responsible for the position on C's return giving rise to an understatement and may be subject to penalty under section 6694.

Example 4. Same as *Example 1,* except Attorney D, who works for a different firm than A, also provides advice on the same position upon which A relies. It may be concluded that D is also primarily responsible for the position on the return and may be subject to penalty under section 6694.

Example 5. Same as *Example 1,* except Attorney B is able to present credible information that A is also responsible for the position on C's return giving rise to an understatement. The IRS may conclude between A and B, the two responsible persons for the position, who is primarily responsible and may assess a section 6694 penalty against A or B, but not both, as the primarily responsible tax return preparer.

(c) *Understatement of liability.* For purposes of this section, an ''understatement of liability'' exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by the Internal Revenue Code (Code), or an overstatement of the net amount creditable or refundable with respect to any tax imposed by the Code. The net amount payable in a taxable year with

respect to the return for which the tax return preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by the Code does not include additions to the tax, additional amounts, and assessable penalties imposed by subchapter 68 of the Code. Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the tax return preparer that is separate and apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or (b) concerning a return or claim for refund has been assessed against one or more tax return preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the position(s) on the return or claim for refund, then—

(1) The assessment shall be abated; and

(2) If any amount of the penalty was paid, that amount shall be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer or other party*—(1) *In general.* For purposes of sections 6694(a) and (b) (including demonstrating that a position complied with relevant standards under section 6694(a) and demonstrating reasonable cause and good faith under § 1.6694–2(e)), the tax return preparer generally may rely in good faith without verification upon information furnished by the taxpayer. A tax return preparer also may rely in good faith and without verification upon information and advice furnished by another advisor, another tax return preparer or other party (including another advisor or tax return preparer at the tax return preparer's firm). The tax return preparer is not required to audit, examine or review books and records, business operations, documents, or other evidence to verify independently information provided by the taxpayer, advisor, other tax return preparer, or other party. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist (for example, that the taxpayer maintain specific documents) before a deduction or credit may be claimed. The tax return preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition of the claiming of a deduction or credit.

(2) *Verification of information on previously filed returns.* For purposes of section 6694(a) and (b) (including meeting the reasonable to believe that the position would more likely than not be sustained on its merits and reasonable basis standards in §§ 1.6694–2(b) and (d)(2), and demonstrating reasonable cause and good faith under § 1.6694–2(e)), a tax return preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS. For example, a tax return preparer who prepares an amended return (including a claim for refund) need not verify the positions on the original return. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. The tax return preparer must confirm that the position being relied upon has not been adjusted by examination or otherwise.

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. During an interview conducted by Preparer E, a taxpayer stated that he had made a charitable contribution of real estate in the amount of $50,000 during the tax year, when in fact he had not made this charitable contribution. E did not inquire about the existence of a qualified appraisal or complete a Form 8283, Noncash Charitable Contributions, in accordance with the reporting and substantiation requirements under section 170(f)(11). E reported a deduction on the tax return for the charitable contribution, which resulted in an understatement of liability for tax, and signed the tax return as the tax return preparer. E is subject to a penalty under section 6694.

Example 2. While preparing the 2008 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099–INT, ''Interest Income'', for a bank account that produced significant taxable income in 2007. When F inquired about any other income, the taxpayer furnished the Form 1099–INT to F for use in preparation of the 2008 tax return. F did not know that the taxpayer owned an additional bank account that generated taxable income for 2008, and the taxpayer did not reveal this information to the tax return preparer notwithstanding F's general inquiry about any other income. F signed the taxpayer's return as the tax return preparer. F is not subject to a penalty under section 6694.

Example 3. In preparing a tax return, for purposes of determining the deductibility of a contribution by an employer for a qualified pension plan, Accountant G relies on a computation of the section 404 limit on deductible amounts made by the enrolled actuary for the plan. On the basis of this calculation, G completed and signed the tax return. It is later determined that there is an understatement of liability for tax that resulted from the overstatement of the section 404 limit on deductible amounts made by the actuary. G had no reason to believe that the actuary's calculation of the limit on deductible contributions was incorrect or incomplete, and the calculation appeared reasonable on its face. G was also not aware at the time the return was prepared of any reason why the actuary did not know all of the relevant facts or that the calculation of the limit on deductible contributions was no longer reliable due to developments in the law since the time the calculation was given. G is not subject to a penalty under section 6694. The actuary, however, may be subject to penalty under section 6694 if the calculation provided by the actuary constitutes a substantial portion of the tax return within the meaning of § 301.7701–15(b)(3) of this chapter.

(f) *Income derived (or to be derived) with respect to the return or claim for refund*—(1) *In general.* For purposes of sections 6694(a) and (b), *income derived (or to be derived)* means all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with which the tax return preparer is associated, *income derived (or to be derived)* means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation where a firm that employs the individual tax return preparer (or the firm of which the individual tax return preparer is a partner, member, shareholder, or other equity holder) is subject to a penalty under section 6694(a) or (b) pursuant to the provisions

in §§ 1.6694–2(a)(2) or 1.6694–3(a)(2), *income derived (or to be derived)* means all compensation the firm receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

(2) *Compensation*—(i) *Multiple engagements.* For purposes of applying paragraph (f)(1) of this section, if the tax return preparer or the tax return preparer's firm has multiple engagements related to the same return or claim for refund, only those engagements relating to the position(s) taken on the return or claim for refund that gave rise to the understatement are considered for purposes of calculating the income derived (or to be derived) with respect to the return or claim for refund.

(ii) *Reasonable allocation.* For purposes of applying paragraph (f)(1) of this section, only compensation for tax advice that is given with respect to events that have occurred at the time the advice is rendered and that relates to the position(s) giving rise to the understatement will be taken into account for purposes of calculating the section 6694(a) and (b) penalties. If a lump sum fee is received that includes amounts not taken into account under the preceding sentence, the amount of income derived will be based on a reasonable allocation of the lump sum fee between the tax advice giving rise to the penalty and the advice that does not give rise to the penalty.

(iii) *Fee refunds.* For purposes of applying paragraph (f)(1) of this section, a refund to the taxpayer of all or part of the amount paid to the tax return preparer or the tax return preparer's firm will not reduce the amount of the section 6694 penalty assessed. A refund in this context does not include a discounted fee or alternative billing arrangement for the services provided.

(iv) *Reduction of compensation.* For purposes of applying paragraph (f)(1) of this section, it may be concluded based upon information provided by the tax return preparer or the tax return preparer's firm that an appropriate allocation of compensation attributable to the position(s) giving rise to the understatement on the return or claim for refund is less than the total amount of compensation associated with the engagement. For example, the number of hours of the engagement spent on the position(s) giving rise to the understatement may be less than the total hours associated with the engagement. If this is concluded, the amount of the penalty will be calculated based upon the compensation attributable to the position(s) giving rise to the understatement. Otherwise, the total amount of compensation from the engagement will be the amount of income derived for purposes of calculating the penalty under section 6694.

(3) *Individual and firm allocation.* If both an individual within a firm and a firm that employs the individual (or the firm of which the individual is a partner, member, shareholder, or other equity holder) are subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§ 1.6694–2(a)(2) or 1.6694–3(a)(2), the amount of penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived (or to be derived) by the firm from the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. The portion of the total amount of the penalty assessed against the individual tax return preparer shall not exceed 50 percent of the individual's compensation as determined under paragraphs (f)(1) and (2) of this section.

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Signing Tax Return Preparer H is engaged by a taxpayer and paid a total of $21,000. Of this amount, $20,000 relates to research and consultation regarding a transaction that is later reported on a return, and $1,000 for the activities relating to the preparation of the return. Based on H's hourly rates, a reasonable allocation of the amount of compensation related to the advice rendered prior to the occurrence of events that are the subject of the advice is $5,000. The remaining compensation of $16,000 is considered to be compensation related to the advice rendered after the occurrence of events that are the subject of the advice and return preparation. The income derived by H with respect to the return for purposes of computing the penalty under section 6694(a) is $16,000, and the amount of the penalty imposed under section 6694(a) is $8,000.

Example 2. Accountants I, J, and K are employed by Firm L. I is a principal manager of Firm L and provides corporate tax advice for the taxpayer after all events have occurred subject to an engagement for corporate tax advice. J provides international tax advice for the taxpayer after all events have occurred subject to a different engagement for international tax advice. K prepares and signs the taxpayer's return under a general tax services engagement. I's advice is the source of an understatement on the return and the advice constitutes preparation of a substantial portion of the return within the meaning of § 301.7701–15(b) of this chapter. I is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position on the taxpayer's return giving rise to an understatement. Thus, I is the tax return preparer who is primarily responsible for the position on the taxpayer's return giving rise to the understatement. Because K's signature as the signing tax return preparer is on the return, the IRS advises K that K may be subject to the section 6694(a) penalty against K to the understatement. K provides credible information that I is the tax return preparer with primary responsibility for the position that gave rise to the understatement. The IRS, therefore, assesses the section 6694 penalty against I. The portion of the total amount of the penalty allocable to I does not exceed 50 percent of that part of I's compensation that is attributable to the corporate tax advice engagement. In the event that Firm L is also liable under the provisions in § 1.6694–2(a)(2), the IRS assesses the section 6694 penalty in an amount not exceeding 50 percent of Firm L's firm compensation based on the engagement relating to the corporate tax advice services provided by I where there is no applicable reduction in compensation pursuant to § 1.6694–1(f)(2)(iii).

Example 3. Same facts as *Example 2,* except that I provides the advice on the corporate matter when the events have not yet occurred. I's advice is the cause of an understatement position on the return, but I is not a tax return preparer pursuant to § 301.7701–15(b)(2) or (3) of this chapter. K is not limited to reliance on persons who provide post-transactional advice if such reliance is reasonable and in good faith. Further, K has reasonable cause because K relied on I for the advice on the corporate tax matter. I, K and Firm L are not liable for the section 6694 penalty.

Example 4. Attorney M is an employee of Firm N with a salary of $75,000 per year. M performs tax preparation work for Client O. Client O's return contains a position that results in an understatement subject to the section 6694 penalty. M spent 100 hours on the position (out of a total 2,000 billed during the year). The total fees earned by Firm N with respect to the position reflected on Client O's return are $50,000. If M is subject to the penalty, the penalty amount computed under the 50 percent of income standard is $.5 \times (100/2{,}000) \times \$75{,}000 = \$1{,}875$. If Firm N is subject to the penalty, the penalty amount computed under the 50% of income standard is $.5 \times \$50{,}000 = \$25{,}000$, less any penalty amount imposed against M. If a penalty of $1,875 was assessed against M and Firm N was subject to the penalty, a penalty of $23,125 would be the amount of penalty assessed against Firm N.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 7.** Section 1.6694–2 is revised to read as follows:

§ 1.6694–2 Penalty for understatement due to an unreasonable position.

(a) *In general*—(1) *Proscribed conduct.* Except as otherwise provided in this

section, a tax return preparer is liable for a penalty under section 6694(a) equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for any return or claim for refund that it prepares that results in an understatement of liability due to a position if the tax return preparer knew (or reasonably should have known) of the position and either—

(i) The position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, and it was not reasonable to believe that the position would more likely than not be sustained on its merits;

(ii) The position was not disclosed as provided in this section, the position is not with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, and there was not substantial authority for the position; or

(iii) The position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) was disclosed as provided in this section but there was no reasonable basis for the position.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(a) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Reasonable to believe that the position would more likely than not be sustained on its merits*—(1) *In general.* If a position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, it is ''reasonable to believe that a position would more likely than not be sustained on its merits'' if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. In reaching this conclusion, the possibility that the position will not be challenged by the Internal Revenue Service (IRS) (for example, because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by § 1.6662–4(d)(3)(ii) (or any successor provision) for purposes of determining whether substantial authority is present applies for purposes of determining whether the more likely than not standard is satisfied. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's diligence. In determining the level of diligence in a particular situation, the tax return preparer's experience with the area of Federal tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts, will be taken into account. A tax return preparer may reasonably believe that a position more likely than not would be sustained on its merits despite the absence of other types of authority if the position is supported by a well-reasoned construction of the applicable statutory provision. For purposes of determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§ 1.6694–1(e) and 1.6694–2(e)(5).

(2) *Authorities.* The authorities considered in determining whether a position satisfies the more likely than not standard are those authorities provided in § 1.6662–4(d)(3)(iii) (or any successor provision).

(3) *Written determinations.* The tax return preparer may avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that the taxpayer's position satisfies the ''more likely than not'' standard if the taxpayer is the subject of a ''written determination'' as provided in § 1.6662–4(d)(3)(iv)(A).

(4) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits. Notwithstanding the preceding sentence, the tax return preparer may reasonably believe that the position would more likely than not be sustained on the merits if the position is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(5) *When ''more likely than not'' standard must be satisfied.* For purposes of this section, the requirement that a position satisfies the ''more likely than not'' standard must be satisfied on the date the return is deemed prepared, as prescribed by § 1.6694–1(a)(2).

(c) [Reserved].

(d) *Exception for adequate disclosure of positions with a reasonable basis*—(1) *In general.* The section 6694(a) penalty will not be imposed on a tax return preparer if the position taken (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) has a reasonable basis and is adequately disclosed within the meaning of paragraph (c)(3) of this section. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (d) of this section.

(2) *Reasonable basis.* For purposes of this section, ''reasonable basis'' has the same meaning as in § 1.6662–3(b)(3) or any successor provision of the accuracy-related penalty regulations. For purposes of determining whether the tax return preparer has a reasonable basis for a position, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§ 1.6694–1(e) and 1.6694–2(d)(5).

(3) *Adequate disclosure*—(i) *Signing tax return preparers.* In the case of a signing tax return preparer within the meaning of § 301.7701–15(b)(1) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority is

adequate if the tax return preparer meets any of the following standards:

(A) The position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275, ''Disclosure Statement,'' or Form 8275–R, ''Regulation Disclosure Statement,'' as appropriate, or on the tax return in accordance with the annual revenue procedure described in § 1.6662–4(f)(2));

(B) The tax return preparer provides the taxpayer with the prepared tax return that includes the disclosure in accordance with § 1.6662–4(f); or

(C) For returns or claims for refund that are subject to penalties pursuant to section 6662 other than the accuracy-related penalty attributable to a substantial understatement of income tax under section 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files.

(ii) *Nonsigning tax return preparers.* In the case of a nonsigning tax return preparer within the meaning of § 301.7701–15(b)(2) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) that satisfies the reasonable basis standard but does not satisfy the substantial authority standard is adequate if the position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or Form 8275–R, as applicable, or on the return in accordance with an annual revenue procedure described in § 1.6662–4(f)(2)). In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (c)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* If a nonsigning tax return preparer provides advice to the taxpayer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the taxpayer of any opportunity to avoid penalties under section 6662 that could apply to the position, if relevant, and of the standards for disclosure to the extent applicable. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity to avoid penalty through disclosure.

(B) *Advice to another tax return preparer.* If a nonsigning tax return preparer provides advice to another tax return preparer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the other tax return preparer that disclosure under section 6694(a) may be required. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the tax return preparer outside the firm has been advised that disclosure under section 6694(a) may be required. If the advice is to another nonsigning tax return preparer within the same firm, contemporaneous documentation is satisfied if there is a single instance of contemporaneous documentation within the firm.

(iii) *Requirements for advice.* For purposes of satisfying the disclosure standards of paragraphs (d)(3)(i)(C) and (ii) of this section, each return position for which there is a reasonable basis but for which there is not substantial authority must be addressed by the tax return preparer. The advice to the taxpayer with respect to each position, therefore, must be particular to the taxpayer and tailored to the taxpayer's facts and circumstances. The tax return preparer is required to contemporaneously document the fact that the advice was provided. There is no general pro forma language or special format required for a tax return preparer to comply with these rules. A general disclaimer will not satisfy the requirement that the tax return preparer provide and contemporaneously document advice regarding the likelihood that a position will be sustained on the merits and the potential application of penalties as a result of that position. Tax return preparers, however, may rely on established forms or templates in advising clients regarding the operation of the penalty provisions of the Internal Revenue Code. A tax return preparer may choose to comply with the documentation standard in one document addressing each position or in multiple documents addressing all of the positions.

(iv) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity is adequate if made at the entity level in accordance with the rules in § 1.6662–4(f)(5) or at the entity level in accordance with the rules in paragraphs (d)(3)(i) or (ii) of this section.

(v) *Examples.* The provisions of paragraph (d)(3) of this section are illustrated by the following examples:

Example 1. An individual taxpayer hires Accountant R to prepare its income tax return. A particular position taken on the tax return does not have substantial authority although there is a reasonable basis for the position. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. R prepares and signs the tax return and provides the taxpayer with the prepared tax return that includes the Form 8275, ''Disclosure Statement,'' disclosing the position taken on the tax return. The individual taxpayer signs and files the tax return without disclosing the position. The IRS later challenges the position taken on the tax return, resulting in an understatement of liability. R is not subject to a penalty under section 6694.

Example 2. Attorney S advises a large corporate taxpayer concerning the proper treatment of complex entries on the corporate taxpayer's tax return. S has reason to know that the tax attributable to the entries is a substantial portion of the tax required to be shown on the tax return within the meaning of § 301.7701–15(b)(3). When providing the advice, S concludes that one position does not have substantial authority, although the position meets the reasonable basis standard. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. S advises the corporate taxpayer that the position lacks substantial authority and the taxpayer may be subject to an accuracy-related penalty under section 6662 unless the position is disclosed in a disclosure statement included in the return. S also documents the fact that this advice was contemporaneously provided to the corporate taxpayer at the time the advice was provided. Neither S nor any other attorney within S's firm signs the corporate taxpayer's return as a tax return preparer, but the advice by S constitutes preparation of a substantial portion of the tax return, and S is the individual with overall supervisory responsibility for the position giving rise to the understatement. Thus, S is a tax return preparer for purposes of section 6694. S, however, will not be subject to a penalty under section 6694.

(e) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if, considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the tax return preparer acted in good faith. Factors to consider include:

(1) *Nature of the error causing the understatement.* The error resulted from

a provision that was complex, uncommon, or highly technical, and a competent tax return preparer of tax returns or claims for refund of the type at issue reasonably could have made the error. The reasonable cause and good faith exception, however, does not apply to an error that would have been apparent from a general review of the return or claim for refund by the tax return preparer.

(2) *Frequency of errors.* The understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant, or material that it should have been discovered during a review of the return or claim for refund. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* The understatement was not material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Tax return preparer's normal office practice.* The tax return preparer's normal office practice, when considered together with other facts and circumstances, such as the knowledge of the tax return preparer, indicates that the error in question would occur rarely and the normal office practice was followed in preparing the return or claim for refund in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims for refund and generally would include, in the case of a signing tax return preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding these rules, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims for refund.

(5) *Reliance on advice of others.* For purposes of demonstrating reasonable cause and good faith, a tax return preparer may rely without verification upon advice and information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer or other party, as provided in § 1.6694–1(e). The tax return preparer may rely in good faith on the advice of, or schedules or other documents prepared by, the taxpayer, another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), who the tax return preparer had reason to believe was competent to render the advice or other information. The advice or information may be written or oral, but in either case the burden of establishing that the advice or information was received is on the tax return preparer. A tax return preparer is not considered to have relied in good faith if—

(i) The advice or information is unreasonable on its face;

(ii) The tax return preparer knew or should have known that the other party providing the advice or information was not aware of all relevant facts; or

(iii) The tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the advice or information was no longer reliable due to developments in the law since the time the advice was given.

(6) *Reliance on generally accepted administrative or industry practice.* The tax return preparer reasonably relied in good faith on generally accepted administrative or industry practice in taking the position that resulted in the understatement. A tax return preparer is not considered to have relied in good faith if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the administrative or industry practice was no longer reliable due to developments in the law or IRS administrative practice since the time the practice was developed.

(f) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 8.** Section 1.6694–3 is amended by revising paragraphs (a), (c)(2) and (3), (d), (e), (f), and (g) to read as follows:

§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general*—(1) *Proscribed conduct.* A tax return preparer is liable for a penalty under section 6694(b) equal to the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer if any part of an understatement of liability for a return or claim for refund that is prepared is due to—

(i) A willful attempt by a tax return preparer to understate in any manner the liability for tax on the return or claim for refund; or

(ii) Any reckless or intentional disregard of rules or regulations by a tax return preparer.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(b) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(b);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

* * * * *

(c) * * *

(2) A tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in § 1.6694–2(c)(2) and is adequately disclosed in accordance with §§ 1.6694–2(c)(3)(i)(A) or (C) or 1.6694–2(c)(3)(ii). In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation and, when disclosed in accordance with §§ 1.6694–2(c)(3)(i)(A) or (C) or 1.6694–2(c)(3)(ii), the tax return preparer must identify the regulation being challenged. For purposes of this section, disclosure on the return in accordance with an annual revenue procedure under § 1.6662–4(f)(2) is not applicable.

(3) In the case of a position contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) published by the Internal Revenue Service in the Internal Revenue Bulletin, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the substantial authority standard described in § 1.6662–4(d) and is not with respect to a reportable transaction to which section 6662A applies.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples:

Example 1. A taxpayer provided Preparer T with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. T knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. T is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided Preparer U with detailed check registers to compute the taxpayer's expenses. U, however, knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because U disregarded information provided in the check registers, U is subject to the penalty under section 6694(b).

Example 3. Preparer V prepares a taxpayer's return in 2009 and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One U.S. Tax Court case decided in 2006 has expressly invalidated that portion of the regulations. There are no courts that ruled favorably with respect to the validity of that portion of the regulations and there are no other authorities existing on the issue. Under these facts, V will have a reasonable basis for the position as defined in § 1.6694–2(d)(2) and will not be subject to the section 6694(b) penalty if the position is adequately disclosed in accordance with paragraph (c)(2) of this section because the position represents a good faith challenge to the validity of the regulations.

(e) *Rules or regulations.* The term *rules or regulations* includes the provisions of the Internal Revenue Code (Code), temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin.

(f) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a tax return preparer may be subject under section 6694(b) for a return or claim for refund is reduced by any amount assessed and collected against the tax return preparer under section 6694(a) for the same position on a return or claim for refund.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 9.** Section 1.6694–4 is revised to read as follows:

§ 1.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* (1) The Internal Revenue Service (IRS) will investigate the preparation by a tax return preparer of a return of tax under the Internal Revenue Code (Code) or claim for refund of tax under the Code as described in § 301.7701–15(b)(4) of this chapter, and will send a report of the examination to the tax return preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which either it was not reasonable to believe that the position would more likely than not be sustained on its merits under section 6694(a) or no substantial authority, as applicable (or not a reasonable basis for disclosed positions); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

(2) Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the IRS will also send, before assessment of either penalty, a 30-day letter to the tax return preparer notifying him of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration and a final administrative determination by the IRS concerning the assessment. If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer.

(3) If the IRS assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the tax return preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(4) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the tax return preparer, the tax return preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(5) If the tax return preparer pays an amount and files a claim for refund under paragraph (a)(4)(ii) of this section, the IRS may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the tax return preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the tax return preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

(6) The IRS may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the IRS and the tax return preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the IRS in contravention of paragraph (a)(5) of this section may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.* The IRS may proceed with collection of the amount of the penalty not paid under paragraph (a)(4)(ii) of this section if the preparer fails to begin a proceeding for refund in the appropriate United States district court within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(4)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the IRS, under paragraph (a)(5) of this section, may not collect the

unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 10.** Section 1.6695–1 is revised to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *Failure to furnish copy to taxpayer.* (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax or claim for refund of tax under the Internal Revenue Code (Code), and who fails to satisfy the requirements imposed by section 6107(a) and § 1.6107–1(a) to furnish a copy of the return or claim for refund to the taxpayer (or nontaxable entity), shall be subject to a penalty of $50 for such failure, with a maximum penalty of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon a tax return preparer who furnishes a copy of the return or claim for refund to taxpayers who—

(i) Hold an elected or politically appointed position with the government of the United States or a state or political subdivision thereof; and

(ii) In order to faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) An individual who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter with respect to a return of tax or claim for refund of tax under the Code as described in § 301.7701–15(b)(4) that is not signed electronically shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. For rules covering electronically signed returns, see paragraph (b)(2) of this section. If the signing tax return preparer is unavailable for signature, another tax return preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) In the case of electronically signed tax returns, the signing tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The signing tax return preparer, however, must furnish all of the information that will be transmitted as the electronically signed tax return to the taxpayer contemporaneously with furnishing the Form 8879, ''IRS e-file Signature Authorization,'' or other similar Internal Revenue Service (IRS) e-file signature form. The information may be furnished on a replica of an official form. The signing tax return preparer shall electronically sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(3) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of $50 for each failure to sign, with a maximum of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the tax return preparer asserts reasonable cause for failure to sign, the IRS will require a written statement to substantiate the tax return preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause that arises despite ordinary care and prudence exercised by the individual tax return preparer.

(4) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

Example 1. Law Firm A employs B, a lawyer, to prepare for compensation estate tax returns and claims for refund of taxes. Firm A is engaged by C to prepare a Federal estate tax return. Firm A assigns B to prepare the return. B obtains the information necessary for completing the return from C and makes determinations with respect to the proper application of the tax laws to such information in order to determine the estate's tax liability. B then forwards such information to D, a computer tax service that performs the mathematical computations and prints the return by means of computer processing. D then sends the completed estate tax return to B who reviews the accuracy of the return. B is the individual tax return preparer who is primarily responsible for the overall accuracy of the estate tax return. B must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 2. Partnership E is a national accounting firm that prepares returns and claims for refund of taxes for compensation. F and G, employees of Partnership E, are involved in preparing the Form 990–T, Exempt Organization Business Income Tax Return, for H, a tax exempt organization. After they complete the return, including the gathering of the necessary information, analyzing the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, I, a supervisory employee of Partnership E, reviews the return. As part of this review, I reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are reviewed by J, an employee of Partnership E. The policies and practices of Partnership E require that K, a partner, finally review the return. The scope of K's review includes reviewing the information provided and applying to this information his knowledge of H's affairs, observing that Partnership E's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine H's tax liability. K may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in I (or F and G), and other factors. K is the individual tax return preparer who is primarily responsible for the overall accuracy of H's return. K must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 3. L corporation maintains an office in Seattle, Washington, for the purpose of preparing partnership returns for compensation. L makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from partners of a partnership and to make decisions with respect to the proper application of the tax laws to the information in order to prepare the partnership return and calculate the partnership's distributive items. M, an individual, who has such an arrangement in Los Angeles with L, collects information from N, the general partner of a partnership, and completes a worksheet kit supplied by L that is stamped with M's name and an identification number assigned to M by L. In this process, M classifies this information in appropriate categories for the preparation of the partnership return. The completed worksheet kit signed by M is then mailed to L. O, an employee in L's office, reviews the worksheet kit to make sure it was properly completed. O does not review the information obtained from N for its validity or accuracy. O may, but did not, make the final decision with respect to the proper application of tax laws to the information provided. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to N with filing instructions. M is the individual tax return preparer primarily responsible for the overall accuracy of the partnership return. M must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 4. P employs R, S, and T to prepare gift tax returns for taxpayers. After R and S have collected the information from a taxpayer and applied the tax laws to the information, the return form is completed by

a computer service. On the day the returns prepared by R and S are ready for their signatures, R is away from the city for 1 week on another assignment and S is on detail to another office in the same city for the day. T may sign the gift tax returns prepared by R, provided that T reviews the information obtained by R relative to the taxpayer, and T reviews the preparation of each return prepared by R. T may not sign the returns prepared by S because S is available.

(5) *Effective/applicability date.* This paragraph (b) is applicable to returns and claims for refund filed after December 31, 2008.

(c) *Failure to furnish identifying number.* (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirement of section 6109(a)(4) and § 1.6109–2(a) to furnish one or more identifying numbers of signing tax return preparers or persons employing the signing tax return preparer (or with which the signing tax return preparer is associated) on a return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature shall be subject to a penalty of $50 for each failure, with a maximum of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No more than one penalty of $50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or record.* (1) A person who is a signing tax return preparer as described in § 301.7701–15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirements imposed upon him or her by section 6107(b) and § 1.6107–1(b) and (c) (other than the record requirement described in both § 1.6107–1(b)(2) and (3)) to retain and make available for inspection a copy of the return or claim for refund, or to include the return or claim for refund in a record of returns and claims for refund and make the record available for inspection, shall be subject to a penalty of $50 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) A person may not, for returns or claims for refund presented to the taxpayers (or nontaxable entities) during each calendar year, be subject to more than $25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060 and § 1.6060–1 and who fails to satisfy these requirements shall pay a penalty of $50 for each such failure, with a maximum of $25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

(f) *Negotiation of check.* (1) No person who is a tax return preparer as described in § 301.7701–15 of this chapter may endorse or otherwise negotiate, directly or through an agent, a check (including an electronic version of a check) for the refund of tax under the Code that is issued to a taxpayer other than the tax return preparer if the person was a tax return preparer of the return or claim for refund which gave rise to the refund check. A tax return preparer will not be considered to have endorsed or otherwise negotiated a check for purposes of this paragraph (f)(1) solely as a result of having affixed the taxpayer's name to a refund check for the purpose of depositing the check into an account in the name of the taxpayer or in the joint names of the taxpayer and one or more other persons (excluding the tax return preparer) if authorized by the taxpayer or the taxpayer's recognized representative.

(2) Section 6695(f) and paragraphs (f)(1) and (3) of this section do not apply to a tax return preparer-bank that—

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

(3) A tax return preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(4) The tax return preparer shall be subject to a penalty of $500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 11.** Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(3), (c) and (d) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of $100 for each such failure.

(b) * * *

(3) *Knowledge*—(i) *In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

Example 2. An 18 year-old female taxpayer with an infant has $3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquires to determine if the taxpayer is the qualifying child of her parents and, therefore, ineligible to claim the EIC.

Example 3. Taxpayer asks Preparer C to prepare his tax return and wants to claim his niece and nephew as qualifying children for the EIC. Preparer C should make reasonable

inquiries to determine whether the children meet EIC qualifying child requirements and ensure possible duplicate claim situations involving the parents or other relatives are properly considered.

Example 4. Taxpayer asks Preparer D to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned $10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. D must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 12.** Section 1.6696–1 is revised to read as follows:

§ 1.6696–1 Claims for credit or refund by tax return preparers or appraisers.

(a) *Notice and demand.* (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term ''tax return preparer'', see section 7701(a)(36) and § 301.7701–15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and § 301.7701–15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser.* A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer's or appraiser's estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer's or appraiser's employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer's or appraiser's employer or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required by paragraph (d) of this section, shall be verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims.* (1) Unless paragraph (c)(2) of this section applies, a tax return preparer shall file a separate claim for each penalty assessed in each statement of notice and demand issued to the tax return preparer.

(2) A tax return preparer may file one or more consolidated claims for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(a) and § 1.6695–1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and § 1.6695–1(b) (relating to failure to sign), section 6695(c) and § 1.6695–1(c) (relating to failure to furnish identifying number), or under section 6695(d) and § 1.6695–1(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a tax return preparer may file one consolidated claim for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(e) and § 1.6695–1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim.* Each claim for credit or refund for any penalty (or penalties) paid by a tax return preparer under section 6694 and § 1.6694–1, or under section 6695 and § 1.6695–1, or paid by an appraiser under section 6695A (and any subsequently issued regulations) shall include the following information, verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury:

(1) The tax return preparer's or appraiser's name.

(2) The tax return preparer's or appraiser's identification number. If the tax return preparer or appraiser is—

(i) An individual (not described in paragraph (d)(2)(iii) of this section) who is a citizen or resident of the United States, the tax return preparer's or appraiser's social security account number (or such alternative number as may be prescribed by the IRS in forms, instructions, or other appropriate guidance) shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed by another tax return preparer or appraiser to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) that employed one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided.

(3) The tax return preparer's or appraiser's address where the IRS mailed the statement (or statements) of notice and demand and, if different, the tax return preparer's or appraiser's address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the IRS campus or office that issued the statement (or statements) of notice and demand for payment of the penalty (or penalties).

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document to which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer's (or nontaxable entity's) name and taxpayer identification number, and by the taxable year to which the document relates.

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim.

(iii) The total amount claimed.

(6) A statement setting forth in detail—

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the IRS of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding § 301.6402–2(c) of this

chapter, Form 6118, ''Claim for Refund of Tax Return Preparer and Promoter Penalties,'' is the form prescribed for making a claim as provided in this section with respect to penalties under sections 6694 and 6695. Form 843, Claim for Refund and Request for Abatement, is the form prescribed for making a claim as provided in this section with respect to a penalty under section 6695A.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the IRS campus or office that issued to the tax return preparer or appraiser the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and § 1.6694–4(a)(4)(ii) and (5), and in section 6694(d) and § 1.6694–1(c):

(A) A claim for a penalty paid by a tax return preparer under section 6694 and § 1.6694–1, or under section 6695 and § 1.6695–1, or by an appraiser under section 6695A (and any subsequently issued regulations) shall be filed within three years from the date the payment was made.

(B) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within three years from the first date of payment of any penalty included in the claim.

(ii) For purposes of this paragraph (g)(1), payment is considered made on the date payment is received by the IRS or, if applicable, on the date an amount is credited in satisfaction of the penalty.

(2) For purposes of determining whether a claim is timely filed, the rules under sections 7502 and 7503 and the provisions of §§ 1.7502–1, 1.7502–2, and 1.7503–1 apply.

(h) *Application of refund to outstanding liability of tax return preparer or appraiser.* The IRS may, within the applicable period of limitations, credit any amount of an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations) against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the tax return preparer or appraiser making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the tax return preparer or appraiser.

(i) *Interest.* (1) Section 6611 and § 301.6611–1 of this chapter apply to the payment by the IRS of interest on an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(2) Section 6601 and § 301.6601–1 of this chapter apply to the payment of interest by a tax return preparer or appraiser to the IRS on any penalty (or penalties) assessed against the tax return preparer under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(j) *Suits for refund of penalty.* (1) A tax return preparer or appraiser may not maintain a civil action for the recovery of any penalty paid under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations), unless the tax return preparer or appraiser has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and § 1.6694–4(b), the periods of limitation contained in section 6532 and § 301.6532–1 of this chapter apply to a tax return preparer's or appraiser's suit for the recovery of any penalty paid under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(ii) The rules under section 7503 and § 301.7503–1 of this chapter apply to the timely commencement by a tax return preparer or appraiser of a suit for the recovery of any penalty paid under section 6694 and § 1.6694–1, under section 6695 and § 1.6695–1, or under section 6695A (and any subsequently issued regulations).

(k) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 13.** The authority citation for part 20 is amended by adding entries in numerical order to read in part as follows:

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

Section 20.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 20.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 20.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 20.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 14.** Section 20.6060–1 is added to read as follows:

§ 20.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 15.** Section 20.6107–1 is added to read as follows:

§ 20.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 16.** Section 20.6109–1 is added to read as follows:

§ 20.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each estate tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 17.** Section 20.6694–1 is added to read as follows:

§ 20.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of estate tax returns or claims see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for

refund filed, and advice provided, after December 31, 2008.

■ **Par. 18.** Section 20.6694–2 is added to read as follows:

§ 20.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 19.** Section 20.6694–3 is added to read as follows:

§ 20.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 20.** Section 20.6694–4 is added to read as follows:

§ 20.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of the period of collection when a tax return preparer who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of the taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under sections 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 21.** Section 20.6695–1 is added to read as follows:

§ 20.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 22.** Section 20.6696–1 is added to read as follows:

§ 20.6696–1 Claims for credit or refund by tax return preparers or appraisers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 23.** Section 20.7701–1 is added to read as follows:

§ 20.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 24.** The authority citation for part 25 is amended by adding entries in numerical order to read in part as follows:

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

Section 25.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 25.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 25.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 25.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 25.** Section 25.6060–1 is added to read as follows:

§ 25.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 26.** Section 25.6107–1 is added to read as follows:

§ 25.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 27.** Section 25.6109–1 is added to read as follows:

§ 25.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each gift tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 28.** Section 25.6694–1 is added to read as follows:

§ 25.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of gift tax returns or claims, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 29.** Section 25.6694–2 is added to read as follows:

§ 25.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 30.** Section 25.6694–3 is added to read as follows:

§ 25.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 31.** Section 25.6694–4 is added to read as follows:

§ 25.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules for the extension of period of collection when a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 32.** Section 25.6695–1 is added to read as follows:

§ 25.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 33.** Section 25.6696–1 is added to read as follows:

§ 25.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 34.** Section 25.7701–1 is added to read as follows:

§ 25.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Par. 35.** The authority citation for part 26 is amended by adding entries in numerical order to read in part as follows:

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

Section 26.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 26.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 26.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 26.6695–2 also issued under 26 U.S.C.6695(g). * * *

■ **Par. 36.** Section 26.6060–1 is added to read as follows:

§ 26.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 37.** Section 26.6107–1 is added to read as follows:

§ 26.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 38.** Section 26.6109–1 is added to read as follows:

§ 26.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each generation-skipping transfer tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 39.** Section 26.6694–1 is added to read as follows:

§ 26.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of generation-skipping transfer tax returns or claims see § 1.6694–1 of this chapter.

(b) Effective/applicability date. Paragraph (a) of this section is applicable to returns and claims for

refund filed, and advice provided, after December 31, 2008.

■ **Par. 40.** Section 26.6694–2 is added to read as follows:

§ 26.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 41.** Section 26.6694–3 is added to read as follows:

§ 26.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 42.** Section 26.6694–4 is added to read as follows:

§ 26.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 43.** Section 26.6695–1 is added to read as follows:

§ 26.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 44.** Section 26.6696–1 is added to read as follows:

§ 26.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 45.** Section 26.7701–1 is added to read as follows:

§ 26.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

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

■ **Par. 46.** The authority citation for part 31 is amended by adding entries in numerical order to read in part as follows:

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

Section 31.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 31.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 31.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 31.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 47.** Section 31.6060–1 is added to read as follows:

§ 31.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 48.** Section 31.6107–1 is added to read as follows:

§ 31.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 49.** Section 31.6109–2 is added to read as follows:

§ 31.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each employment tax return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 50.** Section 31.6694–1 is added to read as follows:

§ 31.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of employment tax returns or claims of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 51.** Section 31.6694–2 is added to read as follows:

§ 31.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 52.** Section 31.6694–3 is added to read as follows:

§ 31.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 53.** Section 31.6694–4 is added to read as follows:

§ 31.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 54.** Section 31.6695–1 is added to read as follows:

§ 31.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 55.** Section 31.6696–1 is added to read as follows:

§ 31.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 56.** Section 31.7701–1 is added to read as follows:

§ 31.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

■ **Par. 57.** The authority citation for part 40 is amended by adding entries in numerical order to read in part as follows:

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

Section 40.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 40.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 40.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 40.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 58.** Section 40.6060–1 is added to read as follows:

§ 40.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of excise tax of any tax to which this part 40 applies other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 59.** Section 40.6107–1 is added to read as follows:

§ 40.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of excise tax of any tax to which this part 40 applies shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 60.** Section 40.6109–1 is added to read as follows:

§ 40.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each return or claim for refund of excise tax of any tax to which this part 40 applies prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 61.** Section 40.6694–1 is added to read as follows:

§ 40.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of returns or claims for refund of excise tax of any tax to which this part 40 applies, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 62.** Section 40.6694–2 is added to read as follows:

§ 40.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax of any tax to which this part 40 applies shall be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 63.** Section 40.6694–3 is added to read as follows:

§ 40.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of return or claim for refund of excise tax of any tax to which this part 40 applies shall be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 64.** Section 40.6694–4 is added to read as follows:

§ 40.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared return or claim for refund of excise tax of any tax to which this part 40 applies pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 65.** Section 40.6695–1 is added to read as follows:

§ 40.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of return or claim for refund of excise tax of any tax to which this part 40 applies shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and negotiation of a check under section 6695(f), in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 66.** Section 40.6696–1 is added to read as follows:

§ 40.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* The rules under § 1.6696–1 of this chapter will apply for claims for credit or refund by a tax return preparer who prepared a return or claim for refund of excise tax of any tax to which this part 40 applies.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 67.** Section 40.7701–1 is added to read as follows:

§ 40.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

■ **Par. 68.** The authority citation for part 41 is amended by adding entries in numerical order to read in part as follows:

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

Section 41.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 41.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 41.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 41.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 69.** Section 41.6060–1 is added to read as follows:

§ 41.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of excise tax under section 4481, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 70.** Section 41.6107–1 is added to read as follows:

§ 41.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of excise tax under section 4481 shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 71.** Section 41.6109–2 is added to read as follows:

§ 41.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.

(a) *In general.* Each excise tax return or claim for refund under section 4481 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 72.** Section 41.6694–1 is added to read as follows:

§ 41.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 73.** Section 41.6694–2 is added to read as follows:

§ 41.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 shall be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 74.** Section 41.6694–3 is added to read as follows:

§ 41.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 shall be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 75.** Section 41.6694–4 is added to read as follows:

§ 41.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under section 4481 pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 76.** Section 41.6695–1 is added to read as follows:

§ 41.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a), failure to sign a return under section 6695(b), failure to furnish an identification number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f), in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 77.** Section 41.6696–1 is added to read as follows:

§ 41.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under section 4481, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 78.** Section 41.7701–1 is added to read as follows:

§ 41.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 44—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1955

■ **Par. 79.** The authority citation for part 44 is amended by adding entries in numerical order to read in part as follows:

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

Section 44.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 44.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 44.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 44.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 80.** Section 44.6060–1 is added to read as follows:

§ 44.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax on wagers under sections 4401 or 4411, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 81.** Section 44.6107–1 is added to read as follows:

§ 44.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 82.** Section 44.6109–1 is added to read as follows:

§ 44.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund of tax under sections 4401 or 4411 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

■ **Par. 83.** Section 44.6694–1 is added to read as follows:

§ 44.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of wagering tax returns or claims for refund under sections 4401 or 4411, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 84.** Section 44.6694–2 is added to read as follows:

§ 44.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall be subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and

claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 85.** Section 44.6694–3 is added to read as follows:

§ 44.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall be subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 86.** Section 44.6694–4 is added to read as follows:

§ 44.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411 pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 87.** Section 44.6695–1 is added to read as follows:

§ 44.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a), failure to sign the return under section 6695(b), failure to furnish an identification number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and negotiation of a check under section 6695(f), in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 88.** Section 44.6696–1 is added to read as follows:

§ 44.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 89.** Section 44.7701–1 is added to read as follows:

§ 44.7701–1 Tax return preparer.

(a) In general. For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) Effective/applicability date. This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 90.** The authority citation for part 53 is amended by adding entries in numerical order to read in part as follows:

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

Section 53.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 53.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 53.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 53.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 91.** Section 53.6060–1 is added to read as follows:

§ 53.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 92.** Section 53.6107–1 is added to read as follows:

§ 53.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 93.** Section 53.6109–1 is added to read as follows:

§ 53.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.

(a) *In general.* Each tax return or claim for refund under Chapter 42 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 94.** Section 53.6694–1 is added to read as follows:

§ 53.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund under Chapter 42 of the Internal Revenue Code, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 95.** Section 53.6694–2 is added to read as follows:

§ 53.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 96.** Section 53.6694–3 is added to read as follows:

§ 53.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the

Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 97.** Section 53.6694–4 is added to read as follows:

§ 53.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 98.** Section 53.6695–1 is added to read as follows:

§ 53.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 99.** Section 53.6696–1 is added to read as follows:

§ 53.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under Chapter 42 of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 100.** Section 53.7701–1 is added to read as follows:

§ 53.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 54—PENSION EXCISE TAXES

■ **Par. 101.** The authority citation for part 54 is amended by adding entries in numerical order to read in part as follows:

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

Section 54.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 54.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 54.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 54.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 102.** Section 54.6060–1 is added to read as follows:

§ 54.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund under Chapter 43 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 103.** Section 54.6107–1 is added to read as follows:

§ 54.6107–1 Tax return preparer must furnish copy of return or claims for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 43 of subtitle D of the Internal Revenue Code, shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 104.** Section 54.6109–1 is added to read as follows:

§ 54.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.

(a) *In general.* Each tax return or claim for refund of tax under Chapter 43 of subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 105.** Section 54.6694–1 is added to read as follows:

§ 54.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under Chapter 43 of subtitle D, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 106.** Section 54.6694–2 is added to read as follows:

§ 54.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 107.** Section 56.6694–3 is added to read as follows:

§ 54.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 108.** Section 54.6694–4 is added to read as follows:

§ 54.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 43 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 109.** Section 54.6695–1 is added to read as follows:

§ 54.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 110.** Section 54.6696–1 is added to read as follows:

§ 54.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under chapter 43 of subtitle D of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 111.** Section 54.7701–1 is added to read as follows:

§ 54.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

■ **Par. 112.** The authority citation for part 55 is amended by adding entries in numerical order to read in part as follows:

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

Section 55.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 55.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 55.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 55.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 113.** Section 55.6060–1 is added to read as follows:

§ 55.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund under chapter 44 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 114.** Section 55.6107–1 is added to read as follows:

§ 55.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 44 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 115.** Section 55.6109–1 is added to read as follows:

§ 55.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund of tax under chapter 44 of Subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 116.** Section 55.6694–1 is added to read as follows:

§ 55.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under chapter 44 of Subtitle D see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 117.** Section 55.6694–2 is added to read as follows:

§ 55.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 118.** Section 55.6694–3 is added to read as follows:

§ 55.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and

claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 119.** Section 55.6694–4 is added to read as follows:

§ 55.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under chapter 44 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 120.** Section 55.6695–1 is added to read as follows:

§ 55.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 121.** Section 55.6696–1 is added to read as follows:

§ 55.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 44 of subtitle D of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 122.** Section 55.7701–1 is added to read as follows:

§ 55.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 56—PUBLIC CHARITY EXCISE TAXES

■ **Par. 123.** The authority citation for part 56 is amended by adding entries in numerical order to read in part as follows:

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

Section 56.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 56.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 56.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 56.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 124.** Section 56.6060–1 is added to read as follows:

§ 56.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 125.** Section 56.6107–1 is added to read as follows:

§ 56.6107–1 Tax return preparer must furnish copy of return and claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 41 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the public charity and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 126.** Section 56.6109–1 is added to read as follows:

§ 56.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under chapter 41 of subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 127.** Section 56.6694–1 is added to read as follows:

§ 56.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under chapter 41 of subtitle D see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 128.** Section 56.6694–2 is added to read as follows:

§ 56.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 129.** Section 56.6694–3 is added to read as follows:

§ 56.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 130.** Section 56.6694–4 is added to read as follows:

§ 56.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 131.** Section 56.6695–1 is added to read as follows:

§ 56.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 132.** Section 56.6696–1 is added to read as follows:

§ 56.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules relating to claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 133.** Section 56.7701–1 is added to read as follows:

§ 56.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 156—EXCISE TAX ON GREENMAIL

■ **Par. 134.** The authority citation for part 156 is amended by adding entries in numerical order to read in part as follows:

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

Section 156.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 156.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 156.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 156.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 135.** Section 156.6060–1 is added to read as follows:

§ 156.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund under section 5881 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 136.** Section 156.6107–1 is added to read as follows:

§ 156.6107–1 Tax return preparer must furnish copy of return and claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 137.** Section 156.6109–1 is added to read as follows:

§ 156.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under section 5881 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 138.** Section 156.6694–1 is added to read as follows:

§ 156.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5881 of the Internal Revenue Code, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 139.** Section 156.6694–2 is added to read as follows:

§ 156.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 140.** Section 156.6694–3 is added to read as follows:

§ 156.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 141.** Section 156.6694–4 is added to read as follows:

§ 156.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 142.** Section 156.6695–1 is added to read as follows:

§ 156.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 143.** Section 156.6696–1 is added to read as follows:

§ 156.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 144.** Section 156.7701–1 is added to read as follows:

§ 156.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

■ **Par. 145.** The authority citation for part 157 is amended by adding entries in numerical order to read in part as follows:

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

Section 157.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 157.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 157.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 157.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 146.** Section 157.6060–1 is added to read as follows:

§ 157.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund for tax under section 5891 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 147.** Section 157.6107–1 is added to read as follows:

§ 157.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 148.** Section 157.6109–1 is added to read as follows:

§ 157.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under section 5891 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 149.** Section 157.6694–1 is added to read as follows:

§ 157.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5891 of the Internal Revenue Code see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 150.** Section 157.6694–2 is added to read as follows:

§ 157.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 151.** Section 157.6694–3 is added to read as follows:

§ 157.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 152.** Section 157.6694–4 is added to read as follows:

§ 157.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 153.** Section 157.6695–1 is added to read as follows:

§ 157.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

■ **Par. 154.** Section 157.6696–1 is added to read as follows:

§ 157.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

■ **Par. 155.** Section 157.7701–1 is added to read as follows:

§ 157.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see § 301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 156.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 157.** Section 301.7701–15 is amended to read as follows:

§ 301.7701–15 Tax return preparer.

(a) *In general.* A *tax return preparer* is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the Internal Revenue Code (Code).

(b) *Definitions*—(1) *Signing tax return preparer.* A *signing tax return preparer* is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund.

(2) *Nonsigning tax return preparer*—(i) *In general.* A *nonsigning tax return preparer* is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of paragraph (b)(3) of this section with respect to events that have occurred at the time the advice is rendered. In determining whether an individual is a nonsigning tax return preparer, time spent on advice that is given after events have occurred that represents less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement shall not be taken into account. Notwithstanding the preceding sentence, time spent on advice before the events have occurred will be taken into account if all facts and circumstances show that the position(s) giving rise to the understatement is primarily attributable to the advice, the advice was substantially given before events occurred primarily to avoid treating the person giving the advice as a tax return preparer, and the advice given before events occurred was confirmed after events had occurred for purposes of preparing a tax return. Examples of nonsigning tax return preparers are tax return preparers who provide advice (written or oral) to a taxpayer (or to another tax return preparer) when that advice leads to a position or entry that constitutes a substantial portion of the return within the meaning of paragraph (b)(3) of this section.

(ii) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Attorney A, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding a completed corporate transaction. The advice provided by A is directly relevant to the determination of an entry on the taxpayer's return, and this advice leads to a position(s) or entry that constitutes a substantial portion of the return. A, however, does not prepare any other portion of the taxpayer's return and is not the signing tax return preparer of this return. A is considered a nonsigning tax return preparer.

Example 2. Attorney B, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding the tax consequences of a proposed corporate transaction. Based upon this advice, the corporate taxpayer enters into the transaction. Once the transaction is completed, the corporate taxpayer does not receive any additional advice from B with respect to the transaction. B did not provide advice with respect to events that have occurred and is not considered a tax return preparer.

Example 3. The facts are the same as Example 2, except that Attorney B provides supplemental advice to the corporate taxpayer on a phone call after the transaction is completed. Attorney B did not provide advice before the corporate transaction occurred with the primary intent to avoid being treated as a tax return preparer. The time incurred on this supplemental advice by B represented less than 5 percent of the aggregate amount of time spent by B providing tax advice on the position. B is not considered a tax return preparer.

(3) *Substantial portion.* (i) Only a person who prepares all or a substantial portion of a return or claim for refund shall be considered to be a tax return preparer of the return or claim for refund. A person who renders tax advice on a position that is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund will be regarded as having prepared that entry. Whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined based upon whether the person knows or reasonably should know that the tax attributable to the schedule, entry, or other portion of a return or claim for refund is a substantial portion of the tax required to be shown on the return or claim for refund. A single tax entry may

constitute a substantial portion of the tax required to be shown on a return. Factors to consider in determining whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion include but are not limited to—

(A) the size and complexity of the item relative to the taxpayer's gross income; and

(B) the size of the understatement attributable to the item compared to the taxpayer's reported tax liability.

(ii)(A) For purposes of applying the rules of paragraph (b)(3)(i) of this section to a nonsigning tax return preparer within the meaning of paragraph (b)(2) of this section only, the schedule or other portion is not considered to be a substantial portion if the schedule, entry, or other portion of the return or claim for refund involves amounts of gross income, amounts of deductions, or amounts on the basis of which credits are determined that are—

(*1*) Less than $10,000; or

(*2*) Less than $400,000 and also less than 20 percent of the gross income as shown on the return or claim for refund (or, for an individual, the individual's adjusted gross income).

(B) If more than one schedule, entry or other portion is involved, all schedules, entries or other portions shall be aggregated in applying the de minimis rule in paragraph (b)(3)(ii)(A) of this section.

(C) The de minimis rule in paragraph (b)(3)(ii)(A) of this section shall not apply to a signing tax return preparer within the meaning of paragraph (b)(1) of this section.

(iii) A tax return preparer with respect to one return is not considered to be a tax return preparer of another return merely because an entry or entries reported on the first return may affect an entry reported on the other return, unless the entry or entries reported on the first return are directly reflected on the other return and constitute a substantial portion of the other return. For example, the sole preparer of a partnership return of income or small business corporation income tax return is considered a tax return preparer of a partner's or a shareholder's return if the entry or entries on the partnership or small business corporation return reportable on the partner's or shareholder's return constitute a substantial portion of the partner's or shareholder's return.

(iv) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. Accountant C prepares a Form 8886, ''Reportable Transaction Disclosure Statement'', that is used to disclose reportable transactions. C does not prepare the tax return or advise the taxpayer regarding the tax return reporting position of the transaction to which the Form 8886 relates. The preparation of the Form 8886 is not directly relevant to the determination of the existence, characterization, or amount of an entry on a tax return or claim for refund. Rather, the Form 8886 is prepared by C to disclose a reportable transaction. C has not prepared a substantial portion of the tax return and is not considered a tax return preparer under section 6694.

Example 2. Accountant D prepares a schedule for an individual taxpayer's Form 1040, ''U.S. Individual Income Tax Return'', reporting $4,000 in dividend income and gives oral or written advice about Schedule A, which results in a claim of a medical expense deduction totaling $5,000, but does not sign the tax return. D is not a nonsigning tax return preparer because the total aggregate amount of the deductions is less than $10,000.

(4) *Return and claim for refund*—(i) *Return.* For purposes of this section, a return of tax is a return (including an amended or adjusted return) filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under the Code, if the type of return is identified in published guidance in the Internal Revenue Bulletin. A return of tax also includes any information return or other document identified in published guidance in the Internal Revenue Bulletin and that reports information that is or may be reported on another taxpayer's return under the Code if the information reported on the information return or other document constitutes a substantial portion of the taxpayer's return within the meaning of paragraph (b)(3) of this section.

(ii) *Claim for refund.* For purposes of this section, a claim for refund of tax includes a claim for credit against any tax that is included in published guidance in the Internal Revenue Bulletin. A claim for refund also includes a claim for payment under section 6420, 6421, or 6427.

(c) *Mechanical or clerical assistance.* A person who furnishes to a taxpayer or other tax return preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical matter is considered a tax return preparer, even though that person does not actually place or review placement of information on the return or claim for refund. See also paragraph (b)(3) of this section.

(d) *Qualifications.* A person may be a tax return preparer without regard to educational qualifications and professional status requirements.

(e) *Outside the United States.* A person who prepares a return or claim for refund outside the United States is a tax return preparer, regardless of the person's nationality, residence, or the location of the person's place of business, if the person otherwise satisfies the definition of *tax return preparer.* Notwithstanding the provisions of § 301.6109–1(g), the person shall secure an employer identification number if the person is an employer of another tax return preparer, is a partnership in which one or more of the general partners is a tax return preparer, is a firm in which one or more of the equity holders is a tax return preparer, or is an individual not employed by another tax return preparer.

(f) *Persons who are not tax return preparers.* (1) The following persons are not tax return preparers:

(i) An official or employee of the Internal Revenue Service (IRS) performing official duties.

(ii) Any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the IRS, but only with respect to those returns prepared as part of the VITA program.

(iii) Any organization sponsoring or administering a VITA program established by the IRS, but only with respect to that sponsorship or administration.

(iv) Any individual who provides tax counseling for the elderly under a program established pursuant to section 163 of the Revenue Act of 1978, but only with respect to those returns prepared as part of that program.

(v) Any organization sponsoring or administering a program to provide tax counseling for the elderly established pursuant to section 163 of the Revenue Act of 1978, but only with respect to that sponsorship or administration.

(vi) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (f)(2) and (3) of this section, but only with respect to those returns and claims for refund prepared as part of the LITC program.

(vii) Any organization that is a qualified LITC, as defined by section 7526, subject to the requirements of paragraphs (f)(2) and (3) of this section.

(viii) An individual providing only typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(ix) An individual preparing a return or claim for refund of a taxpayer, or an officer, a general partner, member, shareholder, or employee of a taxpayer, by whom the individual is regularly and

continuously employed or compensated or in which the individual is a general partner.

(x) An individual preparing a return or claim for refund for a trust, estate, or other entity of which the individual either is a fiduciary or is an officer, general partner, or employee of the fiduciary.

(xi) An individual preparing a claim for refund for a taxpayer in response to—

(A) A notice of deficiency issued to the taxpayer; or

(B) A waiver of restriction on assessment after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax under subtitle A.

(xii) A person who prepares a return or claim for refund for a taxpayer with no explicit or implicit agreement for compensation, even if the person receives an insubstantial gift, return service, or favor.

(2) Paragraphs (f)(1)(vi) and (vii) of this section apply only if any assistance with a return of tax or claim for refund is directly related to a controversy with the IRS for which the qualified LITC is providing assistance or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Code.

(3) Notwithstanding paragraph (f)(2) of this section, paragraphs (f)(1)(vi) and (f)(1)(vii) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under the Code or if the LITC charges more than a nominal fee for its services.

(4) For purposes of paragraph (f)(1)(ix) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well.

(5) For purposes of paragraph (f)(1)(x) of this section, an estate, guardianship, conservatorship, committee, or any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

(6) *Examples.* The mechanical assistance exception described in paragraph (f)(1)(viii) of this section is illustrated by the following examples:

Example 1. A reporting agent received employment tax information from a client from the client's business records. The reporting agent did not render any tax advice to the client or exercise any discretion or independent judgment on the client's underlying tax positions. The reporting agent processed the client's information, signed the return as authorized by the client pursuant to Form 8655, Reporting Agent Authorization, and filed the client's return using the information supplied by the client. The reporting agent is not a tax return preparer.

Example 2. A reporting agent rendered tax advice to a client on determining whether its workers are employees or independent contractors for Federal tax purposes. For compensation, the reporting agent received employment tax information from the client, processed the client's information and filed the client's return using the information supplied by the client. The reporting agent is a tax return preparer.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 158.** The authority citation for part 602 continues to read in part as follows:

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

■ **Par. 159.** In § 602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6060–1(a)(1)	1545–1231
1.6107–1	1545–1231
1.6694–2(c)(3)	1545–1231
20.6060–1(a)(1)	1545–1231
20.6107–1	1545–1231
25.6060–1(a)(1)	1545–1231
25.6107–1	1545–1231
26.6060–1(a)(1)	1545–1231
26.6107–1	1545–1231
31.6060–1(a)(1)	1545–1231
31.6107–1	1545–1231
40.6060–1(a)(1)	1545–1231
40.6107–1	1545–1231
41.6060–1(a)(1)	1545–1231
41.6107–1	1545–1231
44.6060–1(a)(1)	1545–1231
44.6107–1	1545–1231
53.6060–1(a)(1)	1545–1231
53.6107–1	1545–1231
54.6060–1(a)(1)	1545–1231
54.6107–1	1545–1231
55.6060–1(a)(1)	1545–1231
55.6107–1	1545–1231
56.6060–1(a)(1)	1545–1231
56.6107–1	1545–1231
156.6060–1(a)(1)	1545–1231
156.6107–1	1545–1231
157.6060–1(a)(1)	1545–1231
157.6107–1	1545–1231

* * * * *

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 10, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–29750 Filed 12–15–08; 4:15 pm]

BILLING CODE 4830–01–P

Federal Register

Monday,
December 22, 2008

Part III

Department of State

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2007; Notice

DEPARTMENT OF STATE

[Public Notice 6456]

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2007

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2007 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute. Also included are gifts received in previous years including 2 gifts in 2002, 5 gifts in 2005 and 17 gifts in 2006. These latter gifts and expenses are being reported in 2007 as the Office of the Chief of Protocol, Department of State, did not receive the relevant information to include them in earlier reports.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

DATES: Effective December 22, 2008.

Dated: December 5, 2008.

Patrick F. Kennedy,

Under Secretary for Management, Department of State.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household Item (3): crystal bowl, brown and copper quilt, and 4″ × 6″ sterling silver frame. Rec'd—11–Jan–07; Est. Value—$420.00; Location—Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books, hardcover (2): "Stayed Tuned," by Joe Garner and "1,001 Reasons to Love America," by Hubert Pedroli and Mary Tiegreen. Rec'd—11–Jan–07; Est. Value—$55.00; Location—Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: "Jazz for Quiet Moments," by Greg Howard. Rec'd—11–Jan–07; Est. Value—$15.00; Location—Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: assorted chocolates, candies, nuts, and snacks. Rec'd—11–Jan–07; Est. Value—$481.00; Location—Handled Pursuant to Secret Service Policy.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: silver metal box with 4 small silver containers and silver utensil held in glass case. Rec'd—8–Sep–07; Est. Value—$400.00; Location—Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item (2): Rosenthal candleholders with El Salvador Presidential Seal. Rec'd—26–Feb–07; Est. Value—$196.00; Location—Archives Foreign.	His Excellency Elias Antonio Saca Gonzalez, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: leather jewelry box with El Salvador seal. Rec'd—26–Feb–07; Est. Value—$150.00; Location—Archives Foreign.	His Excellency Elias Antonio Saca Gonzalez, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: colorful painting of a bull; held in gold frame. Rec'd—28–Nov–07; Est. Value—$500.00; Location—Archives Foreign.	His Excellency Elias Antonio Saca Gonzalez, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: silver mosaic box with tree and grapes on center surrounded by Mother of Pearl; lined with wood. Rec'd—4–Mar–07; Est. Value— $1,400.00; Location—Archives Foreign.	His Majesty King Abdullah II bin Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household Item: ornate Waterford crystal footed bowl with scalloped border and etched words of presentation. Rec'd—16–Mar–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: live Shamrocks. Rec'd—16–Mar–07; Est. Value—$5.00; Location—Handled Pursuant to Secret Service Policy.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "Sir Edmund Hillary: An Extraordinary Life," by Alexa Johnston. Rec'd—20–Mar–07; Est. Value—$124.00; Location—Archives Foreign.	The Right Honorable Helen Clark, Prime Minister of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: black Icebreaker merino wool peacoat. Rec'd—20–Mar–07; Est. Value—$250.00; Location—Archives Foreign.	The Right Honorable Helen Clark, Prime Minister of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic Equipment (2): Possum Leather True Grip Golf Gloves. Rec'd—20–Mar–07; Est. Value—$42.00; Location—Archives Foreign.	The Right Honorable Helen Clark, Prime Minister of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "The Mosaics of Jordan," by Michele Piccirillo. Rec'd—4–Mar–07; Est. Value—$424.00; Location—Archives Foreign.	Their Majesties King Abdullah II bin Al Hussein and Queen Rania Al Abdullah of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item (9): Mother of Pearl picture frame, four vases, three wind chimes, and a candle holder; held in leather box. Rec'd—26–Dec–07; Est. Value—$425.00; Location—Archives Foreign.	Their Majesties King Abdullah II bin Al Hussein and Queen Rania Al Abdullah of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: silver and enamel Conway Stewart ink pen with maroon, gold, and olive green mosaic design. Rec'd—24–Jul–07; Est. Value—$850.00; Location—Archives Foreign.	Their Majesties King Abdullah II bin Al Hussein and Queen Rania Al Abdullah of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Medallion: gold ornamental piece with the state emblem of Lithuania (Vytis: The White Knight) surrounded by ornate gold horses; mounted on a flat amber stone. Rec'd—12–Feb–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: deep blue porcelain and silver bowl. Rec'd—8–Jan–07; Est. Value—$500.00; Location—Archives Foreign.	His Excellency Jose Manuel Durao Barroso, President of the Commission of the European Communities.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: sterling silver checker board cut out tray with EU symbol, designed by Cleto Munari. Rec'd—29–Apr–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Jose Manuel Durao Barroso, President of the Commission of the European Communities.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: blue lapis lazuli bowl. Rec'd—5–Aug–07; Est. Value—$3,860.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Clothing: black and gold traditional Afghan vest with white ties. Rec'd—5–Aug–07; Est. Value—$35.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: white traditional Afghan pants suit. Rec'd—5–Aug–07; Est. Value—$135.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Religious Item: hand-painted icon of St. Paul; held in a wooden frame. Rec'd—23–Jul–07; Est. Value—$2,500.00; Location—Archives Foreign.	His Excellency Zoran Jolevski, Ambassador Extraordinary and Plenipotentiary of the Republic of Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: 4.4 pound box of Charbonnel et Walker chocolates. Rec'd—29–Jul–07; Est. Value—$222.00; Location—Handled Pursuant to Secret Service Policy.	The Right Honorable James Gordon Brown, M.P., Prime Minister of the United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "Churchill: The Unexpected Hero," by Paul Addison, inscribed by donor. Rec'd—29–Jul–07; Est. Value—$25.00; Location—Archives Foreign.	The Right Honorable James Gordon Brown, M.P., Prime Minister of the United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: green, beige, and red plaid lambswool blanket. Rec'd—29–Jul–07; Est. Value—$95.00; Location—Archives Foreign.	The Right Honorable James Gordon Brown, M.P., Prime Minister of the United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Religious Item: pink pearl prayer beads with attached diamond pendant. Rec'd—31–Jul–07; Est. Value—$3,500.00; Location—Archives Foreign.	Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: sterling silver and finished wood Hermes tray. Rec'd—11–Aug–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: bronze statue of a horse; held in a blue leather box. Rec'd—6–Nov–07; Est. Value—$5,000.00; Location—Archives Foreign.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: assortment of chocolates, fruits, and cookies; held in large tin. Rec'd—26–Dec–07; Est. Value—$932.00; Location—Handled Pursuant to Secret Service Policy.	His Excellency Sheikh Hamad bin Jassim bin Jabir Al Thani, Prime Minister of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: small green dish. Rec'd—26–Dec–07; Est. Value—$23.00; Location—Archives Foreign.	His Excellency Sheikh Hamad bin Jassim bin Jabir Al Thani, Prime Minister of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables (17): boxes of an assortment of candies, fruits, chocolates, and holiday popcorn. Rec'd—14–Dec–07; Est. Value—$303.00; Location—Handled Pursuant to Secret Service Policy.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household Item (2): Gold Aves pattern plate, by Royal Crown Derby. Rec'd—14–Dec–07; Est. Value—$300.00; Location—Recipient purchased item from the General Services Administration.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Holiday Item: gold-tone beaded snowflake Christmas ornament. Rec'd—14–Dec–07; Est. Value—$30.00; Location—Archives Foreign.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household (4): cream colored napkins with gold trim and beaded napkin holders. Rec'd—14–Dec–07; Est. Value—$192.00; Location—Archives Foreign.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Holiday Item: gold-tone Christmas tree with crystal décor. Rec'd—14–Dec–07; Est. Value—$175.00; Location—Archives Foreign.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Holiday Item: gold-tone papier-mache Santa covered in glitter, by Ino Schaller. Rec'd—14–Dec–07; Est. Value—$345.00; Location—Archives Foreign.	His Excellency Saqr Ghobash Saeed Ghobash and Mrs. Fatima Salem, Ambassador Extraordinary and Plenipotentiary, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: tan Vicuna scarf with fringe; held in wooden box; engraved. Rec'd—14–Dec–07; Est. Value—$972.00; Location—Archives Foreign.	His Excellency Alan Garcia Perez, President of the Republic of Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: decorative porcelain bowl with hand-painted floral designs, by Richard Ginori; held in box. Rec'd—11–Dec–07; Est. Value—$1,127.00; Location—Archives Foreign.	His Excellency Giorgio Napolitano, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: rock crystal ashtray. Rec'd—9–Jun–07; Est. Value—$425.00; Location—Archives Foreign.	His Excellency Giorgio Napolitano, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: gold replica of the Temple of Heaven accented with multicolored Swarovski crystals with 5 figurines of the 2008 Olympic Mascots; held in brown leather box with leather portfolio holding certificates of authenticity. Rec'd—28–Nov–07; Est. Value—$3,000.00; Location—Archives Foreign.	His Excellency Yang Jiechi, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: Commemorative Gold and Silver Badge with the Beijing 2008 Olympic Games Mascots. Rec'd—27–Sep–07; Est. Value—$398.00; Location—Archives Foreign.	His Excellency Yang Jiechi, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork (2): abstract paintings of nature, by Mrs. Olmert. Rec'd—26–Nov–07; Est. Value—$3,000.00; Location—Archives Foreign.	His Excellency Ehud Olmert, Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: bronze molding of a man dancing; held in a gold-tone frame. Rec'd—26–Oct–07; Est. Value—$1,200.00; Location—Archives Foreign.	His Excellency Joseph Kabila, President of the Democratic Republic of the Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: silver statue of a Morin Khur; engraved; held in wooden box. Rec'd—22–Oct–07; Est. Value—$400.00; Location—Archives Foreign.	His Excellency N. Enkhbayar, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: royal blue cashmere jacket. Rec'd—22–Oct–07; Est. Value—$414.00; Location—Archives Foreign.	His Excellency N. Enkhbayar, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover (in Mongolian): ''Great Mongolian State.'' Rec'd—22–Oct–07; Est. Value—$89.00; Location—Archives Foreign.	His Excellency N. Enkhbayar, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: burgundy rug with blue, green, orange, and cream accents. Rec'd—26–Sep–07; Est. Value—$1,896.00; Location—Archives Foreign.	His Excellency Gurbanguly Berdimuhammedov, President of Turkmenistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover (3): ''Mount Lebanon,'' by Col. Charles Henry Churchill; Volumes I–III; held in an engraved leather box. Rec'd—4–Oct–07; Est. Value—$5,760.00; Location—Archives Foreign.	The Honorable Saad Hariri, Member of the National Assembly of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumable: assortment of nut pastries. Rec'd—1–Oct–07; Est. Value—$25.00; Location—Handled Pursuant to Secret Service Policy.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: silver-tone statue of Hammurabi's Code of Laws; held in plexiglass box. Rec'd—1–Oct–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: multicolor inlaid wooden box. Rec'd—1–Oct–07; Est. Value—$125.00; Location—Archives Foreign.	His Excellency Jalal Talabani, President of the Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables (3): gift basket with mixed fruit, a bottle of Springleaf iced tea, and a bottle of Desert Pearls Non-Alcoholic Cabernet. Rec'd—9–Sep–07; Est. Value—$67.00; Location—Handled Pursuant to Secret Service Policy.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: black messenger bag printed with ''ABAC, Third ABAC Meeting, September 2007, Sydney, Australia.'' Rec'd—9–Sep–07; Est. Value—$35.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: brown and blue APEC Driza-Bone Riding Coat. Rec'd—9–Sep–07; Est. Value—$125.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: brown APEC Akubra Cattleman hat. Rec'd—9–Sep–07; Est. Value—$104.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork (3): "Brolga," by Tim Djandomerr; "Sheep Station: Australia," by Pamela Griffith; "Where We Live," by Peter Kingston. Rec'd—9–Sep–07; Est. Value—$2,250.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: black Mont Blanc pen. Rec'd—9–Sep–07; Est. Value—$495.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: brown leather APEC portfolio with zipper. Rec'd—9–Sep–07; Est. Value—$500.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry: 18 ct gold APEC pin, by Margaret Kirkwood. Rec'd—9–Sep–07; Est. Value—$750.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic Equipment: 6½′ Tournament Shortstroker fishing rod, by Ian Miller; inscribed. Rec'd—8–Sep–07; Est. Value—$852.00; Location—Archives Foreign.	The Honorable John Howard, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: gold Mariner's Astrolabe; engraved. Rec'd—17–Sep–07; Est. Value—$542.00; Location—Archives Foreign.	His Excellency Jose Socrates, Prime Minister of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover (2): "Encompassing the Globe: Portugal and the World in the 16th and 17th Centuries," published by the Arthur M. Sackler Gallery. Rec'd—17–Sep–07; Est. Value—$110.00; Location—Archives Foreign.	His Excellency Jose Socrates, Prime Minister of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "One Piece of Leather: R.M. Willims: The Man and His Company," by Rob Linn. Rec'd—6–Sep–07; Est. Value—$95.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: "Born to Survive: The Best of Troy Cassar-Daley," by Troy Cassar-Daley. Rec'd—6–Sep–07; Est. Value—$15.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: "The Very Best of Slim Dusty," by Slim Dusty. Rec'd—6–Sep–07; Est. Value—$38.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: "Spirit of the Bush," by Lee Kernaghan. Rec'd—6–Sep–07; Est. Value—$29.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Shoe Care: R.M. Williams Shoe Shine Kit. Rec'd—6–Sep–07; Est. Value—$40.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Shoes: R.M. Williams elastic sided dress boot in brown. Rec'd—6–Sep–07; Est. Value—$332.00; Location—Archives Foreign.	His Excellency Major General Michael Jeffery, M.P., Governor General of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household Item: black leather box hand-crafted from Kangaroo and Barramundi leather. Rec'd—6–Sep–07; Est. Value—$76.00; Location—Archives Foreign.	The Honorable Kevin Rudd, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: sterling silver R.M. Williams longhorn cufflinks. Rec'd—6–Sep–07; Est. Value—$183.00; Location—Archives Foreign.	The Honorable Kevin Rudd, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, softcover: ''John Curtin: A Life,'' by David Day; inscribed. Rec'd—6–Sep–07; Est. Value—$33.00; Location—Archives Foreign.	The Honorable Kevin Rudd, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, softcover: ''Charm Offensive: How China's Soft Power is Transforming the World,'' by Joshua Kurlantzick; inscribed. Rec'd—6–Sep–07; Est. Value—$26.00; Location—Archives Foreign.	The Honorable Kevin Rudd, M.P., Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: kangaroo leather cardholder. Rec'd—7–Sep–07; Est. Value—$53.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: ancient red gum paperweight. Rec'd—7–Sep–07; Est. Value—$138.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: ancient red gum card box. Rec'd—7–Sep–07; Est. Value—$288.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: ancient red gum letter opener. Rec'd—7–Sep–07; Est. Value—$138.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk Accessory: bronze platypus paperweight, by Mary Michelmore. Rec'd—7–Sep–07; Est. Value—$150.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: wooden box with stainless steel and gold accents. Rec'd—20–Jul–07; Est. Value—$500.00; Location—Archives Foreign.	The Right Honorable Patrick Manning, Prime Minister of The Republic of Trinidad and Tobago.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: ''A Panorama Saga II,'' by BP Renegades Steel Orchestra. Rec'd—20–Jul–07; Est. Value—$15.00; Location—Archives Foreign.	The Right Honorable Patrick Manning, Prime Minister of The Republic of Trinidad and Tobago.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: ''Exodus II: The Power and The Glory,'' by various artist. Rec'd—20–Jul–07; Est. Value—$14.00; Location—Archives Foreign.	The Right Honorable Patrick Manning, Prime Minister of The Republic of Trinidad and Tobago.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CD: ''Lydian Steel Live,'' directed by Pat Bishop. Rec'd—20–Jul–07; Est. Value—$15.00; Location—Archives Foreign.	The Right Honorable Patrick Manning, Prime Minister of The Republic of Trinidad and Tobago.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: reproduction of rare map of North America; held in wooden frame. Rec'd—18–Aug–07; Est. Value—$1,500.00; Location—Archives Foreign.	The Right Honorable Stephen Harper, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: ornamental piece of carved wood, held in a brown matted wood frame. Rec'd—25–Jul–07; Est. Value—$520.00; Location—Archives Foreign.	His Excellency Ombeni Y. Sefue, Ambassador Extraordinary and Plenipotentiary, United Republic of Tanzania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: flat wooden carving of tribal people; matted on double canvas and held in gold-painted with green baroque frame. Rec'd—29–Jun–07; Est. Value—$100.00; Location—Archives Foreign.	His Excellency Amadou Toumani Touré, President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: black leather trunk embossed with geometrical designs and gold-plated accents. Rec'd—29–Jun–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Amadou Toumani Touré, President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork (2): black and white drawn portraits, one of Kazimierz Pulaski and one of Tadeusz Kosciuszko; matted and held in a synthetic wood frame. Rec'd—16–Jul–07; Est. Value—$314.00; Location—Archives Foreign.	His Excellency Dr. Lech Kaczynski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book, hardcover: "Figures and Art," by Cmielow. Rec'd—8–Jun–07; Est. Value—$83.00; Location—Archives Foreign.	His Excellency Dr. Lech Kaczynski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: black porcelain Scottie dog. Rec'd—8–Jun–07; Est. Value—$74.00; Location—Archives Foreign.	His Excellency Dr. Lech Kaczynski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapon: black and gold-tone sword. Rec'd—8–Jun–07; Est. Value—$500.00; Location—Archives Foreign.	His Excellency Dr. Lech Kaczynski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books, hardcover (2, in English and in Russian): "English Sonnets, 16th to 19th Century," published by Moscow Raduga Publishers; and an unknown title, by unknown author. Rec'd—1–Jul–07; Est. Value—$40.00; Location—Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: copper and brass samovar. Rec'd—1–Jul–07; Est. Value—$300.00; Location—Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: print of a painting of George Washington standing in front of the sea with words, "George Washington, Barbados. 1751," matted and held in a gold-painted wooden frame with gold-tone presentation plate. Rec'd—21–Jun–07; Est. Value—$400.00; Location—Archives Foreign.	The Right Honorable Owen S. Arthur, M.P., Prime Minister and Minister of Finance, Barbados.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables (3): bottles of wine. Rec'd—11–Jun–07; Est. Value—$40.00; Location—Handled Pursuant to Secret Service Policy.	His Excellency Georgi Parvanov, President of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: bronze depiction of the head of the Thracian King, Sevt III on marble base with gold-tone presentation plaque. Rec'd—11–Jun–07; Est. Value—$305.00; Location—Archives Foreign.	His Excellency Georgi Parvanov, President of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Musical Instrument: electric harp with speakerphone. Rec'd—22–Jun–07; Est. Value—$4,500.00; Location—Archives Foreign.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: Minh Long gold plated tea set with orange accents and images of dragons; includes six tea cups, sugar and cream bowls, and tea pot. Rec'd—22–Jun–07; Est. Value—$300.00; Location—Archives Foreign.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: silver eagle perched on top of an engraved brick base. Rec'd—10–Jun–07; Est. Value—$926.00; Location—Archives Foreign.	His Excellency Sali Berisha, Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Honoraria: sterling silver with gold plate and red and black enamel Order of the National Flag Award; held on red and black ribbon; award is accompanied by a red leather portfolio with gold-tone emblem. Rec'd—10–Jun–07; Est. Value—$300.00; Location—Archives Foreign.	His Excellency Alfred Moisiu, President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: silver clock tower replica featuring working clocks on each side. Rec'd—10–Jun–07; Est. Value—$200.00; Location—Archives Foreign.	His Excellency Alfred Moisiu, President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: photo image of tempera on wood painting entitled, ''The Spring of Life,'' featuring Mary, Mother of God sitting above a fountain being used by various people; held in a gold-painted baroque wooden frame. Rec'd—10–Jun–07; Est. Value—$255.00; Location—Archives Foreign.	His Excellency Alfred Moisiu, President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: beige porcelain Wedgewood bowl with black floral border and words, ''Am I Not a Man and a Brother?'' in center. Rec'd—6–Jun–07; Est. Value—$450.00; Location—Archives Foreign.	The Right Honorable Tony Blair, M.P., Prime Minister of the United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Items (12): Moser crystal champagne flutes with intricate cross-cut filigree texture and wide etched and gilded 24k gold borders embossed with palmettes and acanthus scroll designs. Rec'd—5–Jun–07; Est. Value—$3,060.00; Location—Archives Foreign.	His Excellency Vaclav Klaus, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Book, hardcover (in Czech): "Modra, Nikoli, Zelena Planeta: Co Je Ohrozeno: Klima, Nebo Svoboda?" by donor. Rec'd—5–Jun–07; Est. Value—$15.00; Location—Archives Foreign.	His Excellency Vaclav Klaus, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: purple velvet square hat with white embroidery. Rec'd—5–Jun–07; Est. Value—$35.00; Location—Archives Foreign.	His Excellency Vaclav Klaus, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	CDs (set of 11): various titles of music by Czech musicians. Rec'd—5–Jun–07; Est. Value—$165.00; Location—Archives Foreign.	His Excellency Vaclav Klaus, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory (12): assortment of E. Marinella silk ties. Rec'd—9–Jun–07; Est. Value—$1,860.00; Location—Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: black Salvatore Ferragamo stamped leather tie case. Rec'd—9–Jun–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Romano Prodi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory (6): assortment of Salvatore Ferragamo silk ties. Rec'd—9–Jun–07; Est. Value—$870.00; Location—Archives Foreign.	His Excellency Romano Prodi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: replica of 4th Century BCE Panagiurishte gold treasure. Rec'd—11–Jun–07; Est. Value—$320.00; Location—Archives Foreign.	His Excellency Sergei Stanishev, Prime Minister of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapon: antique silver pistol embellished with silver filigree. Rec'd—10–Jun–07; Est. Value—$1,100.00; Location—Archives Foreign.	The Honorable Ismet Mavriqi, Mayor of Fushe-Kruje, Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Plaque: gold-tone engraved presentation plaque; held in a blue velvet hinged box. Rec'd—10–Jun–07; Est. Value—$65.00; Location—Archives Foreign.	The Honorable Ismet Mavriqi, Mayor of Fushe-Kruje, Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic Equipment: uSurf Wave Action Exerciser. Rec'd—3–May–07; Est. Value—$200.00; Location—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister and Minister for Finance of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic Equipment: iGallop Core and Abs Exerciser. Rec'd—3–May–07; Est. Value—$250.00; Location—Archives Foreign.	His Excellency Lee Hsien Loong, Prime Minister and Minister for Finance of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Ranch Equipment: Husqvarna 335Rx Brush Cutter equipped with comfort grip handles, Ergo Cruise and Smart Start and powered by an X–TORQ engine. Rec'd—16–May–07; Est. Value—$570.00; Location—Archives Foreign.	His Excellency Fredrik Reinfeldt, Prime Minister of Sweden.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household Item: sterling silver William and Son plate with three gold seals (Presidential, Royal, and star with roses) on front and personal inscription on bottom. Rec'd—7–May–07; Est. Value—$2,000.00; Location—Archives Foreign.	Her Majesty Queen Elizabeth II and His Royal Highness The Prince Phillip, Duke of Edinburgh, London, United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry (5): silver rings with agate; held in a wooden box. Rec'd—1–May–07; Est. Value—$300.00; Location—Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapon: 25″ silver sword with curved blade adorned with elaborate detailing and carnelian stones. Rec'd—1–May–07; Est. Value—$1,500.00; Location—Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: off-white and beige ceramic vase. Rec'd—26–Apr–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Shinzo Abe, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collectable: NPB Official Game Ball baseball inscribed by donor. Rec'd—26–Apr–07; Est. Value—$400.00; Location—Archives Foreign.	His Excellency Shinzo Abe, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: round green ceramic plate with tribal design; matted and held in a gold-painted wooden frame. Rec'd—12–Mar–07; Est. Value—$349.00; Location—Archives Foreign.	His Excellency Oscar Berger Perdomo, President of the Republic of Guatemala.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing (2): guayaberas shirts, one with long-sleeves and one with short sleeves. Rec'd—9–Mar–07; Est. Value—$268.00; Location—President retained.	The Honorable Patricio Patron Laviada, Governor of the State of Yucatan, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing (2): guayaberas shirts, one with long-sleeves and one with short sleeves. Rec'd—9–Mar–07; Est. Value—$268.00; Location—Archives Foreign.	The Honorable Patricio Patron Laviada, Governor of the State of Yucatan, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork (in Spanish): print entitled "Museo Municipal de Bellas Artes Juan Manuel Blanes," featuring two cowboys riding horseback through countryside. Rec'd—10–Mar–07; Est. Value—$6.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books, hardcover (2, in Spanish): "Antiguas Estancias del Uruguay: Historia y Produccion," by Ana Ines Zerbino Vanrell and Jose Victor Zerbino Vanrell and "Antiguas Estancias del Uruguay II: Historia y Produccion," by Javier Pastoriza and Miguel Alvarez Montero in custom leather-covered box. Rec'd—10–Mar–07; Est. Value—$80.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: black and white drawings of different styles of boots and spurs, held in a leather portfolio. Rec'd—10–Mar–07; Est. Value—$309.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: pair of antique wooden and animal hide boots with fur cuffs. Rec'd—10–Mar–07; Est. Value—$400.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory: leather and pewter chain gaucho belt with gold-tone accents. Rec'd—10–Mar–07; Est. Value—$310.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: black wool poncho embroidered with "G.W. Bush" and images of intertwined American and Uruguayan flags. Rec'd—10–Mar–07; Est. Value—$353.00; Location—Archives Foreign.	His Excellency Dr. Tabaré Vazquez, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: gold-tone Greek wreath. Rec'd—23–Mar–07; Est. Value—$548.00; Location—Archives Foreign.	Her Excellency Dora Bakoyianni, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Accessory (2): Chapeus Cury black cowboy hat and Chapeus Cury brown classic hat. Rec'd—9–Mar–07; Est. Value—$765.00; Location—Archives Foreign.	His Excellency Jose Serra, Governor of the State of São Paulo, Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household Item: handmade Bani Hamida tribal wall-hanging featuring assorted shades of blue woven sheep's wool triangles strung together with blue beads and tassles; hung on a black iron sconce. Rec'd—5–Jan–07; Est. Value—$450.00; Location—Archives Foreign.	His Excellency Marouf Bakhet, Prime Minister of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: sapphire and diamond necklace, bracelet, earrings, and ring jewelry set; held in green leather box. Rec'd—23–Oct–07; Est. Value—$85,000.00; Location—Archives Foreign.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: desert scene with bedouins, camels, and tent made of gold; resting on large jasper slab; held in green leather case. Rec'd—23–Oct–07; Est. Value—$10,000.00; Location—Archives Foreign.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: purple silk Yves Saint Laurent tote bag with gold-tone handware decorated with crystals; includes an ID tag. Rec'd—17–Jan–07; Est. Value—$2,195.00; Location—Archives Foreign.	Mrs. Bernadette Chirac, Spouse of the President of French Republic, Paris, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Collectable: amethyst mineral specimen from Uruguay. Rec'd—10–Mar–07; Est. Value—$25.00; Location—Archives Foreign.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household Item: wooden tea box with the Ceibo flower burned and painted with red, pink, and green wax colors along the leather cover. Rec'd—10–Mar–07; Est. Value—$30.00; Location—Archives Foreign.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Colonia del Sacramento: Patrimonio Mundial, World Heritage,'' published by UNESCO. Rec'd—10–Mar–07; Est. Value—$30.00; Location—Archives Foreign.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: beige wool ruana with a leather design along the back. Rec'd—10–Mar–07; Est. Value—$250.00; Location—Archives Foreign.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: floral arrangement. Rec'd—10–Mar–07; Est. Value—$40.00; Location—Handled Pursuant to Secret Service Policy.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables (36): Uruguayan herbal tea-bags. Rec'd—10–Mar–07; Est. Value—$5.00; Location—Handled Pursuant to Secret Service Policy.	Mrs. Maria Auxiliadora Delgado de Vazquez, Spouse of the President of the Oriental Republic of Uruguay, Montevideo, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: sterling silver filigree flower earrings and matching brooch; held in an off-white stone box stamped with ''Yucatan'' and a symbol. Rec'd—9–Mar–07; Est. Value—$203.00; Location—Archives Foreign.	The Honorable Patricio Patron Laviada, Governor of the State of Yucatan, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: off-white stone box stamped with ''Yucatan'' and a symbol. Rec'd—9–Mar–07; Est. Value—$65.00; Location—Archives Foreign.	The Honorable Patricio Patron Laviada, Governor of the State of Yucatan, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Desk Accessory: 6″ sterling silver filigree letter opener. Rec'd—9–Mar–07; Est. Value—$38.00; Location—Archives Foreign.	The Honorable Patricio Patron Laviada, Governor of the State of Yucatan, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Mexico: The Revolution and Beyond,'' by Pete Hamill and photographed by Agustin Victor Casasola. Rec'd—15–May–07; Est. Value—$50.00; Location—Archives Foreign.	The Honorable Arturo Sarukan, Ambassador of Mexico to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Hispanic Heritage at the Smithsonian: A Decade of Latino Initiatives,'' published by the Smithsonian Latino Center. Rec'd—15–May–07; Est. Value—$30.00; Location—Archives Foreign.	The Honorable Arturo Sarukan, Ambassador of Mexico to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: red, black, and white Pineda Covalin shawl with large floral print silk on one side and black velvet on reverse. Rec'd—15–May–07; Est. Value—$225.00; Location—Archives Foreign.	The Honorable Arturo Sarukan, Ambassador of Mexico to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Houshold Item: gold clock with Royal Seal by William and Son. Rec'd—7–May–07; Est. Value—$850.00; Location—Archives Foreign.	Her Majesty Queen Elizabeth II and His Royal Highness The Prince Phillip, Duke of Edinburgh, London, United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Items (2): red, white, and blue handmade pillows embroidered with American flag designs; one embroidered with ''Barney'' and an image of Barney and one with ''Beazley'' and an image of Miss Beazley. Rec'd—26–Apr–07; Est. Value—$100.00; Location—Archives Foreign.	Mrs. Akie Abe, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Toy: 12″ stuffed black fleece Scottie dog with beaded American flag collar. Rec'd—26–Apr–27; Est. Value—$100.00; Location—Archives Foreign.	Mrs. Akie Abe, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: porcelain hinged Limoges box with ormolu trim and hand-painted images of Barney and Miss Beazley; painted by Kiyoe Seno. Rec'd—26–Apr–27; Est. Value—$700.00; Location—Archives Foreign.	Mrs. Akie Abe, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: black lacquered tray with gold-tone leaf designs around the outside edge and ''Laura'' on bottom. Rec'd—26–Apr–07; Est. Value—$134.00; Location—Archives Foreign.	Mrs. Akie Abe, Spouse of the Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: 3″ gold lapel pin with garnet stones. Rec'd—6–Jun–07; Est. Value—$300.00; Location—Archives Foreign.	His Excellency Jiri Paroubek, Chairman of Czech Social Democratic Party, Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, softcover: ''Guide to Prague and Towns Across the Czech Republic.'' Rec'd—6–Jun–07; Est. Value—$15.00; Location—Archives Foreign.	His Excellency Jiri Paroubek, Chairman of Czech Social Democratic Party, Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: gold and red butterfly; held in a wooden frame. Rec'd—10–Jun–07; Est. Value—$410.00; Location—Archives Foreign.	The Right Honorable Nikola Gruevski, Prime Minister of the Republic of Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: black leather straw-printed Tanner Krolle handbag with signature circle and square silver-tone fastener and three pockets inside. Rec'd—9–Jun–07; Est. Value—$1,206.00; Location—Archives Foreign.	Mrs. Cherie Blair, Spouse of the Prime Minister of the United Kingdom, London, United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Holiday Item: silver menorah designed by Zelig Segal. Rec'd—19–Jun–07; Est. Value—$500.00; Location—Archives Foreign.	Mrs. Aliza Olmert, Spouse of the Prime Minister of Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: coral and sterling silver jewelry set with filigree accents including dangle earrings, bracelet, necklace, and ring; held in a wooden box. Rec'd—2–May–07; Est. Value—$446.00; Location—Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Jewelry: four sterling silver filigree rings two with opal stones and two with coral stones and a sterling silver lapel pin in the shape of a scabbard and sheath; held in a wooden box. Rec'd—2–May–07; Est. Value—$224.00; Location—Archives Foreign.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: Moser crystal vase with intricate cross-cut filigree texture and gilded 24k gold borders embossed with palmettes and acanthus scroll designs. Rec'd—5–Jun–07; Est. Value—$1,150.00; Location—Archives Foreign.	Mrs. Livia Klausova, Spouse of the President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: women's black calf length wool chapan with red buttons and red, pink, and gold floral design. Rec'd—5–Aug–07; Est. Value—$800.00; Location—Archives Foreign.	Mrs. Shamim Jawad, Spouse of the Afghan Ambassador to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: copper portrait featuring a three-dimensional elephant with handpainted African scenery, includes an engraved copper presentation plate; held in a wood frame. Rec'd—28–Jun–07; Est. Value—$300.00; Location—Archives Foreign.	Mrs. Maureen Mwanawasa, Spouse of the President of the Republic of Zambia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: wooden wall clock in the shape of Africa with handpainted copper front with African scenery and three-dimensional copper elephants and Zambian-shaped copper piece. Rec'd—28–Jun–07; Est. Value—$400.00; Location—Archives Foreign.	Mrs. Maureen Mwanawasa, Spouse of the President of the Republic of Zambia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory (2): E. Marinella scarves; one beige and brown; one brown with colorful flowers. Rec'd—26–Jun–07; Est. Value—$490.00; Location—Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: oil on canvas painting of wild flowers; held in a wooden frame. Rec'd—1–Jul–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Vladimir Putin, Chairman of the Government of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: stone mosaic of Mrs. Bush with gold-tone presentation plate; matted and held in a gold-tone baroque frame. Rec'd—22–Jun–07; Est. Value—$800.00; Location—Archives Foreign.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, softcover (in Italian): "Villa Pamphilj," by Fiorenzo Catalli and Mauro Petrecca. Rec'd—9–Jun–07; Est. Value—$20.00; Location—Archives Foreign.	Mrs. Flavia Prodi, Spouse of the President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: black alligator leather Tod's handbag. Rec'd—9–Jun–07; Est. Value—$1,650.00; Location—Archives Foreign.	Mrs. Flavia Prodi, Spouse of the President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household Item: sterling silver filigree footed jewelry box with silver presentation plate. Rec'd—10–Jun–07; Est. Value—$350.00; Location—Archives Foreign.	Ms. Mirela Moisiu, Daughter of the President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Books, softcover (6): "The Pyramid," "Spring Flowers, Spring Frost," "The Three-Arched Bridge," "The File on H," "The General of the Dead Army," and "The Palace of Dreams," by Ismail Kadare. Rec'd—10–Jun–07; Est. Value—$78.00; Location—Archives Foreign.	Ms. Mirela Moisiu, Daughter of the President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Books, hardcover (3): "Agamemnon's Daughter," "The Successor," and "Elegy for Kosovo," by Ismail Kadare. Rec'd—10–Jun–07; Est. Value—$66.00; Location—Archives Foreign.	Ms. Mirela Moisiu, Daughter of the President of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: silver earrings with turquoise and cornelian stones. Rec'd—26–Sep–07; Est. Value—$120.00; Location—Archives Foreign.	His Excellency Gurbanguly Berdimuhammedov, President of Turkmenistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: silver ring with turquoise and cornelian stones. Rec'd—26–Sep–07; Est. Value—$120.00; Location—Archives Foreign.	His Excellency Gurbanguly Berdimuhammedov, President of Turkmenistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: silver necklace with turquoise and cornelian stones. Rec'd—26–Sep–07; Est. Value—$435.00; Location—Archives Foreign.	His Excellency Gurbanguly Berdimuhammedov, President of Turkmenistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: cobalt glass plate with sterling silver gumleaf design. Rec'd—7–Sep–07; Est. Value—$308.00; Location—Archives Foreign.	The Honorable Morris Iemma, State Premier and Minister for Citizenship, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: gold embroidered silk ethnic shoes with turned up toe and leather lining. Rec'd—5–Aug–07; Est. Value—$38.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: light blue two piece Kurti set; front of top is embroidered with beige silk alternating square patterns. Rec'd—5–Aug–07; Est. Value—$200.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: beige two piece Kurti set; front of top is embroidered with beige silk alternating square patterns. Rec'd—5–Aug–07; Est. Value—$200.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: purple, green, pink and beige striped Dupioni raw silk coat with purple silk lining and embroidery work on collar and cuffs. Rec'd—5–Aug–07; Est. Value—$500.00; Location—Archives Foreign.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Clothing: blue cashmere sweater with silk lining. Rec'd—22–Oct–07; Est. Value—$1,000.00; Location—Archives Foreign.	His Excellency N. Enkhbayar, President of Mongolia, and Mrs. O. Tsolmon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: friendship flag brooch with jewels. Rec'd—24–Oct–07; Est. Value—$1,150.00; Location—Archives Foreign.	Her Excellency Nouriya Al-Sabih, Minister of Education and Higher Education, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: assortment of various nuts and dried fruit. Rec'd—16–Oct–07; Est. Value—$6.00; Location—Handled Pursuant to Secret Service Policy.	His Holiness The Dalai Lama	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: silver and gold Tibetan butter lamp. Rec'd—16–Oct–07; Est. Value—$750.00; Location—Archives Foreign.	His Holiness The Dalai Lama	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: multi-colored hand-crafted Kurdish rug. Rec'd—5–Oct–07; Est. Value—$450.00; Location—Archives Foreign.	Mrs. Hero Ibrahim Ahmed, Spouse of the President of The Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: ivory, tan, and dark blue Kurdish "Khurg" bag. Rec'd—5–Oct–07; Est. Value—$75.00; Location—Archives Foreign.	Mrs. Hero Ibrahim Ahmed, Spouse of the President of The Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: silver necklace with large black beads and large black pendant. Rec'd—27–Sep–07; Est. Value—$100.00; Location—Archives Foreign.	Mrs. Toure Lobbo Traore, Spouse of the President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Fabric: blue and green fabric with plastic coating. Rec'd—27–Sep–07; Est. Value—$65.00; Location—Archives Foreign.	Mrs. Toure Lobbo Traore, Spouse of the President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Fabric: orange and green fabric with plastic coating. Rec'd—27–Sep–07; Est. Value—$65.00; Location—Archives Foreign.	Mrs. Toure Lobbo Traore, Spouse of the President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: multi-colored basket with leather strap. Rec'd—27–Sep–07; Est. Value—$140.00; Location—Archives Foreign.	Mrs. Toure Lobbo Traore, Spouse of the President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: straw basket. Rec'd—27–Sep–07; Est. Value—$30.00; Location—Archives Foreign.	Mrs. Toure Lobbo Traore, Spouse of the President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: 2″ gold brooch with coral center; held in orange leather case. Rec'd—11–Dec–07; Est. Value—$2,000.00; Location—Archives Foreign.	Mrs. Clio Bittoni Napolitano, Spouse of the President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: set of 6 sterling silver wine glass charms by Asprey. Rec'd—7–Dec–07; Est. Value—$510.00; Location—Archives Foreign.	Lady Catherine Meyer, Spouse of the British Ambassador to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: 50 yellow roses and orchids. Rec'd—5–Nov–07; Est. Value—$400.00; Location—Handled Pursuant to Secret Service Policy.	His Majesty Mohammed, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Consumables (30): boxes of assorted Godiva chocolate. Rec'd—5–Nov–07; Est. Value—$1,021.00; Location—Handled Pursuant to Secret Service Policy.	His Majesty Mohammed, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: Shannon Crystal vase. Rec'd—5–Nov–07; Est. Value—$40.00; Location—Archives Foreign.	His Majesty Mohammed, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: floral arrangement. Rec'd—19–Nov–07; Est. Value—$175.00; Location—Handled Pursuant to Secret Service Policy.	Mrs. Emine Erdogan, Spouse of the Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Contemporary Turkish Painting,'' by New York State University At Binghamton. Rec'd—19–Nov–07; Est. Value—$30.00; Location—Personally Retained by the First Lady.	Mrs. Emine Erdogan, Spouse of the Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: ''Sanat Koleksiyonu 1, 2 Volumes,'' by Turkiye Cumhuriyet Merkez Bankasi/Central Bank of The Republic of Turkey. Rec'd—19–Nov–07; Est. Value—$300.00; Location—Archives Foreign.	Mrs. Emine Erdogan, Spouse of the Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: large ivory colored Persian wool rug. Rec'd—25–Oct–07; Est. Value—$2,200.00; Location—Archives Foreign.	His Highness Sheikh Nawaf Al-Ahmed Al-Jaber Al Sabah, Crown Prince of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: small ivory colored Persian wool and silk rug. Rec'd—25–Oct–07; Est. Value—$1,600.00; Location—Archives Foreign.	His Highness Sheikh Nawaf Al-Ahmed Al-Jaber Al Sabah, Crown Prince of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: various perfumes and incense with burner; held in a burgundy presentation box. Rec'd—25–Oct–07; Est. Value—$740.00; Location—Archives Foreign.	His Highness Sheikh Nawaf Al-Ahmed Al-Jaber Al Sabah, Crown Prince of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: large sterling silver model of Al Jahili Castle resting on circular lapis base; includes sterling silver and enamel flag that attaches to top of castle; held in red leather box in wood cabinet on wheels; made by Asprey. Rec'd—22–Oct–07; Est. Value—$12,000.00; Location—Archives Foreign.	Her Highness Sheikha Fatima Bint Mubarak, Chair, United Arab Emirates' Womens Association, Embassy of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: collection of fragrance and incense with burner and lighter; held in a wooden box. Rec'd—24–Oct–07; Est. Value—$740.00; Location—Archives Foreign.	His Excellency Sheikh Nasser Mohammad Al Sabah, Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: perfume incense set. Rec'd—24–Oct–07; Est. Value—$740.00; Location—Handled Pursuant to Secret Service Policy.	The Honorable Rasha Al-Sabah, Under Secretary of Higher Education of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Clothing: gold silk robe with green, brown, and orange designs. Rec'd—24–Oct–07; Est. Value—$120.00; Location—Archives Foreign.	The Honorable Rasha Al-Sabah, Under Secretary of Higher Education of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: crystal Baccarat wave bowl; held in red box. Rec'd—6–Nov–07; Est. Value—$6,000.00; Location—Archives Foreign.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Desk Accessory (2): small and medium desk trays with painting of three women. Rec'd—24–Sep–07; Est. Value—$125.00; Location—Archives Foreign.	Mrs. Hajiya Turai Yar'adua, Spouse of the President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: burgundy leather chest. Rec'd—24–Sep–07; Est. Value—$85.00; Location—Archives Foreign.	Mrs. Hajiya Turai Yar'adua, Spouse of the President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: ivory colored handmade two-piece outfit with red and green stitching; includes hat. Rec'd—24–Sep–07; Est. Value—$125.00; Location—Archives Foreign.	Mrs. Hajiya Turai Yar'adua, Spouse of the President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Item: multicolored rug with fringe. Rec'd—24–Sep–07; Est. Value—$300.00; Location—Archives Foreign.	Mrs. Hajiya Turai Yar'adua, Spouse of the President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Items (7): silver filigree tray with six matching decorative goblets. Rec'd—10–Jun–07; Est. Value—$1,263.00; Location—Archives Foreign.	Dr. Liri Rama Berisha, Spouse of the Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: dark burgundy matador vest embellished with gold embroidery and tassels. Rec'd—10–Jun–07; Est. Value—$250.00; Location—Archives Foreign.	Dr. Liri Rama Berisha, Spouse of the Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household Items (7): light brown organza table cloth, table runner, and five napkins, each intricately embroidered with silver-tone, copper-tone and brass-tone designs, faux pearls, and metallic beads. Rec'd—10–Jun–07; Est. Value—$403.00; Location—Archives Foreign.	Dr. Liri Rama Berisha, Spouse of the Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: silver filigree wishing well; held in a blue velvet box. Rec'd—24–Sep–07; Est. Value—$325.00; Location—Archives Foreign.	Dr. Liri Rama Berisha, Spouse of the Prime Minister of the Republic of Albania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing: ivory silk long-sleeved blouse embroidered with red, blue and green flowers. Rec'd—8–Jun–07; Est. Value—$150.00; Location—Archives Foreign.	His Excellency Georgi Purvanov, President of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Book, hardcover: "Bulgaria," published by All Bulgarian Foundation. Rec'd—8–Jun–07; Est. Value—$148.00; Location—Archives Foreign.	His Excellency Georgi Purvanov, President of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: silver filigree decorative buckle. Rec'd—8–Jun–07; Est. Value—$191.00; Location—Archives Foreign.	His Excellency Georgi Purvanov, President of the Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household Items (7): small sterling silver spoons embellished with turquoise. Rec'd—31–Mar–07; Est. Value—$350.00; Location—Archives Foreign.	His Excellency Luis Inacio Lula da Silva, President of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elliot Abrams, Deputy Assistant to the President and Deputy National Security Advisor for Global Democracy Strategy.	Accessory: Concord Mariner watch with black face and silver band; held in a polished wood box. Rec'd—1–Mar–07; Est. Value—$1,435.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elliot Abrams, Deputy Assistant to the President and Deputy National Security Advisor for Global Democracy Strategy.	Household Item: ornate silver box with red, white, and blue accents; held in leather red box. Rec'd—5–Mar–07; Est. Value—$750.00; Location—Transferred to General Services Administration.	The Honorable Mohamed Yassine Mansouri, Director of the Directorate General of Studies and Documentation, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joshua B. Bolten, Assistant to the President and Chief of Staff.	Accessory: Hanowa Swiss Military Sealander Men's Diving Watch with stainless steel case and rubber strap. Rec'd—13–Apr–07; Est. Value—$337.00; Location—Transferred to General Services Administration.	His Excellency Samuel Schmid, Chief, Federal Department of Defense, Civil Protection, and Sports of the Swiss Confederation, Switzerland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joshua B. Bolten, Assistant to the President and Chief of Staff.	Weapon Swiss Army Classic featuring small blade, scissors and nail file. Rec'd—13–Apr–07; Est. Value—$15.00; Location—Personally retained by the staff member.	His Excellency Samuel Schmid, Chief, Federal Department of Defense, Civil Protection, and Sports of the Swiss Confederation, Switzerland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joshua B. Bolten, Assistant to the President and Chief of Staff.	Accessory: navy E. Marinella tie with small red circles. Rec'd—1–Jun–07; Est. Value—$165.00; Location—Personally retained by the staff member.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joshua B. Bolten, Assistant to the President and Chief of Staff.	Accessory: navy E. Marinella tie with small white squares. Rec'd—1–Jun–07; Est. Value—$165.00; Location—Transferred to General Services Administration.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Bertram D. Braun, Director for Southeast Europe, National Security Council.	Artwork: painting of a castle with personal inscription, by H.P. Bosaulea; held in large gold-tone frame. Rec'd—19–Dec–07; Est. Value—$450.00; Location—Transferred to General Services Administration.	Her Excellency Bisera Turkovic, Ambassador of Bosnia and Herzegovina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jack D. Crouch, Assistant to the President and Deputy National Security Advisor.	Household item: silver goblet with Greek National Police seal engraved on front. Rec'd—28–Mar–07; Est. Value—$500.00; Location—Transferred to General Services Administration.	Mr. Anatosios Dimoschakis, Chief of the Greek National Police, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Coin (2): silver and gold commemorative coins from the Republic of Montenegro; held in a blue case. Rec'd—4–May–07; Est. Value—$500.00; Location—Transferred to General Services Administration.	His Excellency Filip Vujanovic, President of the Republic of Montenegro.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Consumables: various chocolates, fruits, and cookies; held in large tin. Rec'd—26–Dec–07; Est. Value—$932.00; Location—Handled pursuant to Secret Service policy.	His Excellency Sheikh Hamad bin Jassim bin Jabir Al Thani, Prime Minister of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household Item: small green dish. Rec'd—26–Dec–07; Est. Value—$23.00; Location—Transferred to General Services Administration.	His Excellency Sheikh Hamad bin Jassim bin Jabir Al Thani, Prime Minister of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household Item: sterling silver plate with blue and red floral design on tile insert; held in a blue velvet case. Rec'd—26–Nov–07; Est. Value—$602.00; Location—Transferred to General Services Administration.	His Excellency Abdullah Gul, President of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Household Item: lapis lazuli box with brass interior. Rec'd—31–Oct–07; Est. Value—$485.00; Location—Transferred to General Services Administration.	His Excellency Yunis Qanuni, Speaker of the Lower House of the National Assembly, Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Accessory: E. Marinella blue silk tie with white accents. Rec'd—7–Jun–07; Est. Value—$165.00; Location—Transferred to General Services Administration.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Hadley, Assistant to the President for National Security Affairs.	Accessory (2): E. Marinella silk twill ties; one burgundy with repeating blue flowers and one navy with scattered blue and burgundy flowers. Rec'd—7–Jun–07; Est. Value—$330.00; Location—Pending Transfer to General Services Administration.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mary A. Haines, Deputy Executive Secretary for Scheduling and Advance.	Household Item: white porcelain coffee set with gold and blue accents. Rec'd—1–Jul–07; Est. Value—$425.00; Location—Recipient purchased item from General Services Administration.	Mr. Igor O. Shchegolev, Head of Protocol, Office of The President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mary A. Haines, Deputy Executive Secretary for Scheduling and Advance.	Accessory: Bernard Richards quartz watch with two dials and red leather strap; held in blue case. Rec'd—6–Nov–07; Est. Value—$401.00; Location—Transferred to General Services Administration.	His Excellency Nicolas Sarkozy, President of the Republic of France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Emily Harding, Director for Iran, National Security Council.	Accessory: sterling silver Tiffany & Co quartz watch with black leather strap. Rec'd—23–Oct–07; Est. Value—$2,800.00; Location—Transferred to General Services Administration.	Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques and King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
LTG Douglas Lute, Assistant to the President and Deputy National Security Advisor for Iraq and Afghanistan.	Household Item (6): lapis lazuli coasters; held in lapis holder. Rec'd—14–Aug–07; Est. Value—$385.00; Location—Transferred to General Services Administration.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Anita B. McBride, Assistant to the President and Chief of Staff to the First Lady.	Accessory: sterling silver Tiffany & Co quartz watch with black leather strap. Rec'd—23–Oct–07; Est. Value—$2,800.00; Location—Recipient purchased item from General Services Administration.	Abdullah bin Abd al-Aziz Al Saud, Custodian of the Two Holy Mosques and King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elizabeth M. Phu, Director of Southeast Asia, National Security Council.	Household Item: sterling silver vase with floral engravings. Rec'd—19–Oct–07; Est. Value—$680.00; Location—Transferred to General Services Administration.	His Excellency Tam Chien Nguyen, Ambassador of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism.	Desk Accessory (16): set of cream-colored greeting cards and envelopes with black and white images from Saudi Arabia on the front of each card. Rec'd—5–Feb–07; Est. Value—$48.00; Location—Transferred to General Services Administration.	Princess Rima, Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism.	Consumables: sandalwood and perfume in wooden display case. Rec'd—5–Feb–07; Est. Value—$805.00; Location—Transferred to General Services Administration.	Princess Rima, Saudi Arabia	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism.	Desk Accessory: gilded silver dhow with plaque reading, ''Presented by H.E. Sheikh Rashid bin Abdulla Al-Khalifa, Minister of the Interior—Kingdom of Bahrain, March 2007;'' held in red case. Rec'd—20–Mar–07; Est. Value—$1,500.00; Location—Transferred to General Services Administration.	His Excellency Rashid bin Abdallah bin Ahmad al-Khalifa, Minister of Interior of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism.	Household Item: Afghan rug with repeating black, brown, burgundy, and orange repeating diamond pattern with grey fringe. Rec'd—1–Feb–07; Est. Value—$800.00; Location—Pending Transfer to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Frances F. Townsend, Assistant to the President for Homeland Security and Counterterrorism.	Artwork: painting of street scene on tiles; held in a wooden frame. Rec'd—13–Jul–07; Est. Value—$475.00; Location—Transferred to General Services Administration.	LTG Mohammed Medienne, Director, Department of Military Security, Ministry of National Defense, Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jared Weinstein, Special Assistant to the President and Personal Aide.	Household Item: lapis lazuli box with stone floral design on hinged lid; held in a blue velvet case. Rec'd—5–Sep–07; Est. Value—$420.00; Location—Transferred to General Services Administration.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Amy Zantzinger, Special Assistant to the Prseident and White House Social Secretary.	Accessory: Bernard Richards quartz watch with two dials and red leather strap; held in blue case. Rec'd—6–Nov–07; Est. Value—$400.60; Location—Transferred to General Services Administration.	His Excellency Nicolas Sarkozy, President of the Republic of France.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE, OFFICE OF THE VICE PRESIDENT

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Rare book entitled The Ruins of Balbec, published in England in 1757. Rec'd—29–Oct–07; Est. Value—$5,000.00; Disposition—Archives.	His Excellency Saad R. Hariri, Member of the Lebanese Parliament.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Saudi artifact: fist from a sandstone sculpture believed to depict Babylonian King Naponeed from a site in Tayma Province, Saudi Arabia. Rec'd—12–May–07; Est. Value—$2,500; Disposition—Archives.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Saudi artifact: Nabatean pottery altar, inscribed in Nabatean, from the Qraya/Tayma Oasis. Rec'd—12–May–07; Est. Value—$10,000; Disposition—Archives.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Three woodblock prints from the Atachi Institute Collection. Rec'd—21–Feb–07; Est. Value—$346; Disposition—Archives.	His Excellency Taro Aso, Member of the Japanese House of Representatives.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver desk set. Rec'd—4–Mar–07; Est. Value—$500; Disposition—Archives.	General Yasar Buyukanit, Commander of the Turkish Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver plate with the seal of the Turkish General Staff. Rec'd—4–Mar–07; Est. Value—$125; Disposition—Archives.	General Yasar Buyukanit, Commander of the Turkish Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver figurine of a Mongolian musical instrument. Rec'd—14–Nov–07; Est. Value—$275; Disposition—Archives.	His Excellency Nambaryn Enkhbayar, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Book—Great Mongolian State. Rec'd—14–Nov–07; Est. Value—$65; Disposition—Archives.	His Excellency Nambaryn Enkhbayar, President of Mongolia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Gold and silver plate with dragon motif. Rec'd—7–Jun–07; Est. Value—$750; Disposition—Archives.	His Excellency Sheng Huaren, Vice Chr. Of Standing Cmte, Chinese National People's Congress.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver box with the royal seal. Rec'd—13–Mar–07; Est. Value—$550; Disposition—Archives.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Five perfumed oils. Rec'd—21–May–07; Est. Value—$125; Location—Handled pursuant to U.S. Secret Service policy.	His Excellency Yousuf Alawi Abdulla Al Ibrahim, Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Five gold vermeil perfume bottles. Rec'd—21–May–07; Est. Value—$2,000; Disposition—Archives.	His Excellency Yousuf Alawi Abdulla Al Ibrahim, Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Woven wool Afghani carpet. Rec'd—6–Mar–07; Est. Value—$900; Disposition—Archives.	His Excellency Hamid Karzai, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Framed calligraphy painting. Rec'd—4–May–07; Est. Value—$650; Disposition—Archives.	His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Woven wool Pakistani carpet. Rec'd—27–Feb–07; Est. Value—$1,125; Disposition—Archives.	His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Sterling silver dagger. Rec'd—2–May–07; Est. Value—$1,000; Disposition—Archives.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE, OFFICE OF THE VICE PRESIDENT—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Five sterling silver and agate rings. Rec'd—2–May–07; Est. Value—$250; Disposition—Archives.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Silk prayer rug. Rec'd—22–May–07; Est. Value—$950; Disposition—Archives.	Field Marshal Hussein Tantawi, Commander-in-Chief of the Egyptian Armed Forces, Minister of Defense and Military Production.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Framed print of the Gavrilo Princip Bridge in Sarajevo. Rec'd—19–Dec–07; Est. Value—$450; Disposition—Archives.	Her Excellency Dr. Bisera Turkovic, Ambassador of Bosnia & Herzegovina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chief of Staff to the Vice President, David Addington.	Framed painting of a Bosnian street scene by H.P. Bosaulia. Rec'd—19–Dec–07; Est. Value—$350; Disposition—General Services Administration.	Her Excellency Dr. Bisera Turkovic, Ambassador of Bosnia & Herzegovina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President	Clock trimmed in malachite, sterling silver and gold vermeil. Rec'd—11–May–07; Est. Value—$7,500; Disposition—Archives.	His Highness Sheikh Mohamed bin Zayed, Crown Prince of Abu Dhabi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff	Twenty boxes of Medjool dates. Rec'd—11–May–07; Est. Value—$960; Location—Handled pursuant to U.S. Secret Service policy.	His Highness Sheikh Mohamed bin Zayed, Crown Prince of Abu Dhabi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President's Staff	Twenty boxes of Middle Eastern sweets. Rec'd—11–May–07; Est. Value—$1,000; Location—Handled pursuant to U.S. Secret Service policy.	His Highness Sheikh Mohamed bin Zayed, Crown Prince of Abu Dhabi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Assistant to the Vice President for National Security Affairs, John Hannah.	Mont Blanc Solitaire roller ball pen. Rec'd—11–Nov–07; Est. Value—$349; Disposition—General Services Administration.	Minister Michel Edde, General Maronite Council, Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chief of Staff to the Vice President, David Addington.	Framed print by Helen Zughaib. Rec'd—11–Jun–07; Est. Value—$450; Disposition—General Services Administration.	Ms. Amal Mudallali, advisor to Saad R. Hariri, member of the Lebanese Parliament.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant to the Vice President for National Security Affairs, Joseph Wood.	Silk prayer rug. Rec'd—30–May–07; Est. Value—$1,450; Disposition—General Services Administration.	His Excellency Elmar Mammadyarov, Minister of Foreign Affairs of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Deputy Assistant to the Vice President for National Security Affairs, Joseph Wood.	Adidas gym bag. Rec'd—30–May–07; Est. Value—$30; Disposition—General Services Administration.	His Excellency Elmar Mammadyarov, Minister of Foreign Affairs of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Assistant to the Vice President for National Security Affairs, John Hannah.	Silk Iraqi carpet. Rec'd—27–Jan–07; Est. Value—$2,150; Disposition—General Services Administration.	His Excellency Jalal Talabani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Special Advisor to the Vice President for National Security Affairs, Robert Karem.	Silk Iraqi carpet. Rec'd—27–Jan–07; Est. Value—$2,275; Disposition—General Services Administration.	His Excellency Jalal Talabani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Special Advisor to the Vice President for National Security Affairs, Robert Karem.	Silk Iraqi carpet. Rec'd—27–Jan–07; Est. Value—$2,275; Disposition—General Services Administration.	His Excellency Jalal Talabani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Condoleezza Rice, Secretary of State of the United States.	Porcelain coffee/tea set for 6, blue design. Rec'd—June 22, 2007; Est. Value—$325.00; Location—Transferred to General Services Administration.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Inlaid multi-colored octagon box. Rec'd—July 18, 2007; Est. Value—$325.00; Location—Transferred to General Services Administration.	Mr. M.K. Narayanan, National Security Advisor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Gift set of 5 Olympic gold coins in plexiglass case in red box with "Beijing 2008" official licensed product. Rec'd—September 23, 2007; Est. Value—$1,200.00; Location—Transferred to General Services Administration.	His Excellency Yang Jiechi, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Pictograms of the Beijing 2008 Olympic Games Pin Set. Rec'd—September 24, 2007; Est. Value—$460.00; Location—Transferred to General Services Administration.	His Exellency Dai Bingguo, Vice Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1 square meter silk carpet with orange, tan, green and merlot colors patterns inside green velvet suitcase, silk on woolpile. Rec'd—September 26, 2007; Est. Value—$600.00; Location—Transferred to General Services Administration.	His Excellency Gurbanguly Berdimuhammedov, President of Turkmenistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Large painting, floral bouquet with hands. Rec'd—April 9, 2007; Est. Value—$8,000.00; Location—Pending Transfer to General Services Administration.	His Excellency Jacques-Édouard Alexis, Prime Minister of Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Wooden box with inlay design; 2. Jewelry-necklace and earrings. Rec'd—January 14, 2007; Est. Value—$4,630.00; Location—Transferred to General Services Administration.	His Majesty and Her Majesty King Abdullah II bin Al Hussein and Rania Al-Abdullah, King of the Hashemite Kingdom of Jordan and Queen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Clerc silver stainless watch. Rec'd—December 20, 2006; Est. Value—$1,200.00; Location—Transferred to General Services Administration.	His Highness Sheikh Tamin bin Hamad Al-Thani, Heir Apparent, Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Crystal vase—Baccarat. Rec'd—June 25, 2007; Est. Value—$420.00; Location—Transferred to General Services Administration.	His Excellency Herve Morin, Minister of Defense of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Herme's silk scarf. Rec'd—June 24, 2007; Est. Value—$350.00; Location—Transferred to General Services Administration.	His Excellency Bernard Kouchner, Minister of Foreign of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Gilded, ornament horn. Rec'd—February 19, 2007; Est. Value—$440.00; Location—Transferred to General Services Administration.	His Excellency Igor Ivanov, Minister of Foreign Affairs of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Ruby and diamond necklace, earrings, bracelet and ring. Rec'd—July 31, 2007; Est. Value—$165,000.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Book: Mam jalal, From a Fredom Fighter to a President with inscription from President Talabani to Secretary Rice; 2. Inlaid box, 30 X 30 cm, probably mass produced in Syria, lined with red cushioned material 3. Inlaid box, 30 X 30 cm, probably mass produced in Syria, lined with red cushioned material. Rec'd—December 18, 2007; Est. Value—$405.00; Location—Pending Transfer to General Services Administration.	His Excellency Jalal Talabani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Green chest with drawers filled with bags of dates; 2. 8 Bottles of Carthage brand extra virgin olive oil; 3. 6 Bottles of wine from Les Vignes de Tanit Vinyard. Rec'd—December 20, 2007; Est. Value—$450.00; Location—Pending Transfer to General Services Administration.	His Excellency Zine El-Abidine Bem Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Malachite over onyx in green box and glass with black base paperweight. Rec'd—August 1, 2007; Est. Value—$510.00; Location—Transferred to General Services Administration.	Prince Muqrin bin Abdul Aziz, Director of the General Intelligence Presidency of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Silver inlaid icon in wooden box and silver candleholders and candles. Rec'd—October 17, 2007; Est. Value—$560.00; Location—Transferred to General Services Administration.	Theophilos, Patriach of Jerusalem, Palestinian Authority.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	14K gold pendant and chain with Ancient Roman silver coin. Rec'd—October 17, 2007; Est. Value—$540.00; Location—Pending Transfer to General Services Administration.	Theophilos, Patriach of Jerusalem, Palestinian Authority.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Emerald and diamond jewelry (ring, bracelet, necklace and earrings) 19K white gold. Rec'd—January 5, 2007; Est. Value—$147,000.00; Location—Transferred to General Services Administration.	His Majesty Abdullah bin Al-Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Jewelry box. Rec'd—February 15, 2007; Est. Value—$345.00; Location—Transferred to General Services Administration.	Mrs. Park Geun-Hye, National Assembly Member of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Ebony elephant adorned with sterling silver and jewels. Rec'd—March 16, 2007; Est. Value—$850.00; Location—Transferred to General Services Administration.	The Right Honorable Rohitha Bogollagama, M.P., Minister of Foreign Affairs of the Democratic Socialist Republic of Sri Lanka.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. One glass box with filigree silver palm tree and gold dates hanging from it; 2. One glass box with pewter copy of Code of Hammurabi as a stele in it. Rec'd—February 17, 2007; Est. Value—$1,140.00; Location—Transferred to General Services Administration.	His Excellency Jalal Talabani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Book: Czech composer Bedrick Smetana's sheet music; 2. Black and ivory-colored tea set. Rec'd—April 19, 2007; Est. Value—$400.00; Location—Transferred to General Services Administration.	His Excellency Karel Schwarzenberg, Minister of Foreign Affairs of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Necklace, earrings, bracelet and ring set; 2. Set of 5 rings. Rec'd—May 10, 2007; Est. Value—$405.00; Location—Transferred to General Services Administration.	His Excellency Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	One decorative plate with plate stand; four cloisonne boxes and one painting. Rec'd—January 3, 2006; Est. Value—$325.00; Location—Transferred to General Services Administration.	Her Royal Majesty Rania Al Abdullah, Queen of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Hermes square crystal vase 3 piece set. Rec'd—June 24, 2007; Est. Value—$345.00; Location—Transferred to General Services Administration.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	1. Leather Bag; 2. Book: Colonia. Rec'd—March 10, 2007; Est. Value—$465.00; Location—Transferred to General Services Administration.	His Excellency Celso Amorim, Minister of Foreign Affairs of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Condoleezza Rice, Secretary of State of the United States.	Necklace—flower petal motif. Rec'd—November 13, 2005; Est. Value—$170,000.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Geeta Pasi	Pearl (7.0–8.5 ml off round) necklace 63″ long. Rec'd—September 1, 2007; Est. Value—$1,800.00; Location—Transferred to General Services Administration.	M.G. Islam, National Intelligence Director of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Geeta Pasi	Glass replica of the Muscat Festival 2007 Entrance Gate. Rec'd—January 1, 2007; Est. Value—$987.00; Disposition—Permission to Retain for official use only.	Engineer Abdallah Bin Abbas Bin Ahmad, Mayor of Muscat Municpality.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jeffrey Feltman, Deputy Principal Officer, Consulate General Jerusalem.	1. Olive tree, estimated to be over 100 years old, transplanted on the Embassy compound (Consular Building grounds); 2. Old painted door, estimated to be over 50 years old. Rec'd—March 27, 2007; Est. Value—$3,000.00; Disposition—Permission to Retain for official use only.	Walid Joumblatt, Chairman of the Progressive Socialist Party.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John D. Negroponte, Deputy Secretary of State.	Silk beige, blue and pink floor rug. Rec'd—December 7, 2007; Est. Value—$680.00; Location—Pending Transfer to General Services Administration.	Lieutenant General Nadeem Taj, Director General Inter Services Intelligence, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Thomas Barnard, Regional Security Officer.	Ebel men's wrist watch. Rec'd—June 7, 2007; Est. Value—$1,900.00; Location—Transferred to General Services Administration.	His Excellency Al Nour Nasser Salem, Brigradier General of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Thomas Barnard, Regional Security Officer.	Ebel men's wrist watch. Rec'd—January 16, 2007; Est. Value—$1,900.00; Location—Transferred to General Services Administration.	Colonel Matar Hamad Al Muhairy, General Director, Security Affairs and Ports, UAE.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nina Behrens, Diplomatic Interpreter.	Black leather and silver Tiffany & Co. wrist watch. Rec'd—October 23, 2007; Est. Value—$1,800.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Eric Donelan, Special Agent—Diplomatic Security.	Woman's Movado Certa stainless steel watch. Rec'd—October 18, 2007; Est. Value—$430.00; Location—Transferred to General Services Administration.	His Excellency Nassir Abdulaziz Al-Nasser, Ambassador to the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Eric Donelan, Special Agent—Diplomatic Security.	Clerc men's watch, stainless steel silver with blue face. Rec'd—January 13, 2007; Est. Value—$1,200.00; Location—Transferred to General Services Administration.	His Excellency Nassir Abdulaziz Al-Nasser, Ambassador to the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Leslie Moeller, Consular Officer	Gift set containing two types of perfume and wood. Rec'd—August 25, 2007; Est. Value—$950.00; Location—Transferred to General Services Administration.	Saudi Telecommunications, Government of the Kindgom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sheibh Hassan, Consular Officer	Gift set containing two types of perfume and wood. Rec'd—August 25, 2007; Est. Value—$950.00; Location—Transferred to General Services Administration.	Saudi Telecommunications, Government of the Kindgom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mario Boniol, Radio Tech	Gift set containing two types of perfume and wood. Rec'd—August 25, 2007; Est. Value—$950.00; Location—Transferred to General Services Administration.	Saudi Telecommunications, Government of the Kindgom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ford Fraker, Ambassador	Large desk plaque of Abha Tower and commemorating AMB visit to the city. Rec'd—December 26, 2007; Est. Value—$400.00; Location—Retained by Recipient.	Dr. Mohamed Al-Mezher, Secretary General of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ford Fraker, Ambassador	1. Book: Safeya Binzagr....A Three Decade Journey with Saudi Heritage; 2. Plate with painting by Safeya Bizagr. Rec'd—May 23, 2007; Est. Value—$353.00; Location—Pending Transfer to General Services Administration.	Abdullah S. Jum'ah, CEO of Aramco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ford Fraker, Ambassador	Tiffany's men watch. Rec'd—October 23, 2007; Est. Value—$3,900.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chase Untermeyer, Ambassador	Watch, wallet, cufflinks and pen—Paco Rabanne set. Rec'd—May 31, 2007; Est. Value—$385.00; Location—Transferred to General Services Administration.	General Major Hamad Al-Attiyah, Chief of Staff, Qatari Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Cecilia Elizondo Herrera, Principal Officer.	Cartier Pasha platinum ballpoint pen ST220006. Rec'd—December 12, 2007; Est. Value—$590.00; Location—Transferred to General Services Administration.	Baltazar Hinojosa, Mayor of the City Matamoros.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sean McCormack, Assistant Secretary for Public Affairs and Spokesman.	Concord LASCLA tonne wrist watch. Rec'd—March 1, 2007; Est. Value—$1,950.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Patricia Butenis, Ambassador	Gold necklace, earring set with diamond studs—18K yellow gold. Rec'd—June 7, 2007; Est. Value—$900.00; Location—Transferred to General Services Administration.	Brigadier General ATM Amin, Director, Counter Terrorism Bureau, Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Eliot Cohen, Consular Officer	Rug—3 borders, 7 horseman, deers, tigers and pumas. Rec'd—July 19, 2007; Est. Value—$450.00; Location—Transferred to General Services Administration.	His Excellency Aftab Ahmed Khan Sherpao, Minister of Interior of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mary Dubose, Staff Assistant	Portrait of President Bush, silk framed. Rec'd—May 24, 2007; Est. Value—$950.00; Location—Transferred to General Services Administration.	Dr. Chan Laiwan and the China Red Sandaklwood Museum in Beijing.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable David Welch, Assistant Secretary of State.	Concord LASCLA tonne wrist watch. Rec'd—March 1, 2007; Est. Value—$1,950.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable David Welch, Assistant Secretary of State.	Concord LASCLA tonne wrist watch. Rec'd—March 1, 2007; Est. Value—$1,950.00; Location—Transferred to General Services Administration.	The Custodian of the Two Holy Mosques King Abdullah Bin Abdul Aziz Al Saud, King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James C. Oberwetter, U.S. Ambassador to Saudi Arabia.	1. Silver Bedouin necklace with red beads; 2. Replica of small door from Qassim area; 3. Incense kit with wood and local perfumes. Rec'd—March 10, 2007; Est. Value—$331.67; Location—Transferred to General Services Administration.	Dr. Faisal Bin Abdel Karim Ali Al Khamis, Qassim Chamber of Commerce.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nicholas Burns, U.S. Political Affiars.	1. Oil painting by Tihomir Lonxar; 2. Book of Loncar's art. Rec'd—May 1, 2007; Est. Value—$500.00; Disposition—Permission to Retain for official use only.	His Excellency Dr. Ivo Sanader, Prime Minister of the Republic of Croatia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nicholas Burns, U.S. Political Affiars.	Afghan rug. Rec'd—March 1, 2007; Est. Value—$400.00; Disposition—Permission to Retain for official use only.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nicholas Burns, U.S. Political Affiars.	Decorative Moroccan jewelry box/case. Rec'd—February 21, 2007; Est. Value—$485.00; Location—Transferred to General Services Administration.	Mr. Mohamed Yassine Mansouri, Director of Moroccan Intelligence.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gary Grappo, Ambassador	Amber glass horse head. Rec'd—May 1, 2006; Est. Value—$2,361.00; Disposition—Permission to Retain for official use only.	Sheikh Saud Salim Bahwan, Chairman of the Saud Bahwan Group.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gary Grappo, Ambassador	Khanjar. Rec'd—May 1, 2007; Est. Value—$390.00; Disposition—Permission to Retain for official use only.	His Excellency Salim bin Aufit al Shanfari, Chairman of Dhofar Municipality, Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gary Grappo, Ambassador	Glass replica of the Muscat Festival 2007 Entrance Gate. Rec'd—January 1, 2007; Est. Value—$987.00; Disposition—Permission to Retain for official use only.	Engineer Abdallah Bin Abbas Bin Ahmad, Mayor of Muscat Municpality.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Ronald E. Neumann, Ambassador.	Carpet. Rec'd—February 15, 2007; Est. Value—$350.00; Disposition—Permission to Retain for official use only.	Haji Elmas, Member of Parliament from Parwan Province, Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John Cloud, Ambassador	Commemorative statuette depicting bronze feather on stone base. Rec'd—July 25, 2007; Est. Value—$941.00; Disposition—Permission to Retain for official use only.	His Excellency Valdas Adamkus, President of the Republic of Lithuania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Benedicte Monroe, Ambassador	Necklace, earrings and ring set-yellow and white gold 104.50 grams total weight. Rec'd—July 1, 2007; Est. Value—$1,820.00; Disposition—Permission to Retain for official use only.	Her Royal Highness Sheikha Sabika Bint Ibrahim Al Khalifa, Wife of the King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elaine Neumann, Ambassador ..	22K gold necklace, earring and ring set. Rec'd—February 6, 2007; Est. Value—$1,960.00; Location—Transferred to General Services Administration.	Her Royal Highness Sheikha Sabika Bint Ibrahim Al Khalifa, Wife of the King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Michael V. Hayden, Director, Central Intelligence Agency.	Silver two bottle ink stand, in a rectangular footed tray with pen groove and two hinged top ink wells centering a removable bell. Rec'd—February 2, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	Single strand pearl necklace, with 14-karat white gold clasp. Rec'd—March 29, 2007; Est. Value—$500.00; Location—Pending transfer to General Services Administration..	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	Filigree silver mounted and oval cabochon agate scabbard sword, 20th Century in a fitted case. Rec'd—May 1, 2007; Est. Value—$500.00; Location—Pending transfer to General Services Administration..	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	24-karat gold figure of a cow-form divinity on a wood plaque base. Rec'd—June 5, 2007; Est. Value—$1,000.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Michael V. Hayden, Director, Central Intelligence Agency.	18-karat yellow gold medallion in a fitted red reptile case. Rec'd—September 28, 2007; Est. Value—$3,500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	Silk rug, 9 feet by 6 feet, red ground with five vertical rows of lozenge medallions on light green and ivory ground, geometric guard border on light blue ground. Rec'd—September 28, 2007; Est. Value—$1,000.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	Visconti fountain pen with 14-karat white gold banded faux tortoise body in a fitted case. Rec'd—December 10, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Michael V. Hayden, Director, Central Intelligence Agency.	Jeweled embossed silver round box together with a group of five silver pendants. Rec'd—January 21, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Kappes, Deputy Director, Central Intelligence Agency.	Two stainless steel gentleman's and lady's automatic water resistant wristwatches, Cartier each in a fitted gold stenciled red leather case. Rec'd—July 9, 2007; Est. Value—$3,000.00; Location—Pending transfer to General Services Administration..	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Kappes, Deputy Director, Central Intelligence Agency.	Bronze group of the Horse Race, sculpted as two mounted horses at the finish line, on a green verdigris partial patinated terrain base, mounted on a walnut plinth with leather belt strapping. Rec'd—April 7, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
Stephen J. Kappes, Deputy Director, Central Intelligence Agency.	Brass mounted mother-of-pearl and bone inlaid walnut flint-lock-rifle, 19th Century, with octagonal steel barrel and walnut stock inlaid with mother-of-pearl brass and bone. Rec'd—February 2, 2007; Est. Value—$750.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Icon of St. George Slaying the Dragon, last quarter 19th Century, with Cyrillic inscription on reverse. Rec'd—April 29, 2005; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Gentleman's stainless steel automatic chronograph wristwatch with date and calendar with a stainless steel flexible band, Longines. Rec'd—July 1, 2007; Est. Value—$700.00; Location—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Gentleman's gold and stainless steel wristwatch, Rolex Oyster Perpetual Date Submariner Chronometer with a gold and stainless steel flexible band. Rec'd—July 17, 2007; Est. Value—$3,500.00; Location—Pending transfer to General Services Administration.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Silk rug, 4 feet 10 inches by 3 feet 1 inch, navy blue ground with palmette and trellising vine field, centering a pulled star medallion on rose ground with a navy border. Rec'd—May 13, 2006; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Silk rug, 4 feet 10 inches by 3 feet 2 inches, ivory ground with palmette and trellising vine field centering a pulled star medallion on light rust ground, floral spray and ivory spandrels, complementary guard border on red ground. Rec'd—November 11, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.
An Agency Employee	Silk rug, 4 feet 10 inches by 3 feet 2 inches, ivory ground with palmette and trellising vine field centering a pulled star medallion on light rust ground, floral spray and ivory spandrels, complementary guard border on red ground. Rec'd—November 11, 2007; Est. Value—$500.00; Location—To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives.	One framed, colored-glass and stone painting. Rec'd—June 21, 2007; Est. Value—$350.00; Location—Office of the Clerk.	His Excellency Nguyen Minh Triet, President of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEFENSE INTELLIGENCE AGENCY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Robert Rosedale, Defense Attache, Saudi Arabia.	Mont Blanc pen. Rec'd—August 26, 2007; Est. Value—$570.00; Location—Defense Intelligence Agency General Counsel's Office.	Major General Abdul-Rahman Al-Marshed, Minister of Defense and Aviation Chief of Intelligence & Security (J2), Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Colonel Robert Friedenberg, Defense Attache Kuwait.	Aigner watch. Rec'd—June 2007; Est. Value—$521; Location—Pending transfer to GSA.	Mr. Abdal Rahman Had-Hood, the Chief, Analysis Branch, Kuwait Department of Military Intelligence and Security, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF AGRICULTURE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mike Johanns, U.S. Secretary of Agriculture.	A jar of Caspian Caviar Sevruga Malossol 300 grams net wt 10.58 oz. approx. Rec'd—28–Feb–07; Est. Value—$535.00; Location—The caviar was returned to Secretary on 3/7/2007, but later destroyed due to spoilage.	His Excellency Kanat B. Saudabayev, Ambassador of Republic of Kazakhstan, Embassy of Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF ARMY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brigadier General Daniel P. Bolger, Joint Readiness Training Center, Fort Polk, Louisiana.	Necklace with green beads and gold plated earrings. Rec'd—27–Apr–07; Est. Value—$305; Disposition—Transferred to General Services Administration August 16, 2007.	Mrs. Gloria Rodriguez de Moreno, Wife of Vice Commander of the Columbian Military Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Ann E. Dunwoody, Command General, Military Traffic Management Command, Headquarters.	Necklace Gold w/Earring & Ring ($5,000). Rec'd—12–Apr–07; Est. Value—$5,000; Disposition—Transferred to General Services Administration.	Dr. Sheikh al Jaber Ali al Sabah, Kuwait Port Authority, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major General Ann E. Dunwoody, Command General, Military Traffic Management Command, Headquarters.	Gold Necklace ($3,000). Rec'd—12–Apr–07; Est. Value—$3,000; Disposition—Pending Transfer to General Services Administration.	Dr. Sheikh al Jaber Ali al Sabah, Kuwait Port Authority, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Barbara Doornink, Deputy Commanding General, Military Traffic Management Command, Headquarters.	Gold Bracelet with Ring ($3,000). Rec'd—12–Apr–07; Est. Value—$3,000; Disposition—Transferred to General Services Administration.	Dr. Sheikh al Jaber Ali al Sabah, Kuwait Port Authority, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF ARMY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General Joseph Peterson, Chief of Staff/Deputy Commanding General.	22K Gold Rope Chain ($180); 22K Gold Link Chain ($80); Gold Pendant of Iraq ($115); Gold Pendant of Iraq w/ Blue & White ($115); Gold Pendant of Iraqi coin ($119); Gold Ring with clear stones ($1,200). Rec'd—27–Apr–07; Est. Value—$1,809; Disposition—Transferred to General Services Administration August 16, 2007.	His Excellency Falah Hassan, Ministry of Interior, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Victoria A. Leignadier, Commander 598th Transportation Group.	Mont Blanc Watch ($1,000). Rec'd—12–Apr–07; Est. Value—$1,000; Disposition—Transferred to General Services Administration.	Dr. Sheikh al Jaber Ali al Sabah, Kuwait Port Authority, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major Kathryn Spletstoser, Assistant Division Commander, Military Traffic Management Command, Headquarters.	Pendant Flag Sterling Silver ($3,000). Rec'd—12–Apr–07; Est. Value—$3,000; Disposition—Transferred to General Services Administration.	Dr. Sheikh al Jaber Ali al Sabah, Kuwait Port Authority, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Colonel James D. Hess, Commander 325th Brigade Support Battalion.	Men's Quartz Watch ($666). Rec'd—14–Mar–07; Est. Value—$666; Disposition—Transferred to General Services Administration.	Brigadier General Yunis, Commander, Garrison Support, Republic of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF COMMERCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carlos M. Gutierrez, Secretary of Commerce.	A 14½-inch vase made of blue malachite stone, gilded interior. Rec'd—20–Aug–07; Est. Value—$350.00; Location—In storage at Department of Commerce.	Dr. Mir Muhammad Amin Farhang, Afghan Minister of Commerce.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Photo album #203d Barcode 992925D—photo album having blue fabric hard cover marked "with the compliments of the Ministry of National Defense, PR China", containing 37 polychrome photos of Robert Gates plus Chinese males, in fabric-covered sleeve with same "compliments". Rec'd—11/05/2007; Est. Value—$100.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Book—The Palace Museum #203e Barcode 992925E—hardcover, red fabric cover, ''The Palace Museum Edited by the Palace Museum'' [ISBN 978–7–80047–621–1]. Rec'd—11/05/2007; Est. Value—$85.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Parque Forestal Painting—DB #171a—Barcode 992867B. Rec'd—10/04/2007; Est. Value—$330.00; Location—Pending transfer to GSA.	His Excellency Jose Goni Carrasco, Minister of Defense, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Book—Art of Birds—#171b—Barcode 992867B. Rec'd—10/04/2007; Est. Value—$30.00; Location—Pending transfer to GSA.	His Excellency Jose Goni Carrasco, Minister of Defense, Chile.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	DVD—The Palace Museum #203f barcode 992925F—DVD/videotape by China International TV Corporation [www.CCTV–YX.com], labeled ''CCTV—International Edition''. Rec'd—11/05/2007; Est. Value—$40.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Knife with leather sheath—Barcode 992597—reticulated steel blade depicting brasstone cross, brasstone arrow, silvertone ship, signed with limited edition no. 02/14, in carved wood handle displaying curves, in brown leather sheath with brasstone cleat; in presentation box with presentation tag. Rec'd—12/06/2002; Est. Value—$365.00; Location—Pending transfer to GSA.	Vice Admiral Tarmo Kouts, Chief of Defense Estonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Artwork, set of three framed reliefs, sences of Warsaw—Barcode 992600—3 plaque, each an embossed silver rectangle stamped ''925'' (indicating sterling grade) plus gilt highlights, in mat and printed wood grain frame, in presentation box with presentation tag to Peter Pace. The scenes are historic places in Warsaw, Poland. Rec'd—09/21/2006; Est. Value—$365.00; Location—Pending transfer to GSA.	General Franciszek Gagor, Chief of Defense, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Artwork, elephant with three riders—Barcode 992601—handpainted ink and color, of 3 males on an elephant dressed in ornaments, including tiny apparent rubies and emeralds, signed ''Badu Lal Maroha'', in green silk mat and molded goldtone frame with foliated design, 15½″ h × 13¼″ w. Rec'd—06/05/2006; Est. Value—$440.00; Location—Pending transfer to GSA.	Air Marshal Ajit Bhavanami, Vice Chief of the Air Staff, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Wood plaque with brass eagle inscribed ''Armada de Mexico''—Barcode 992627A—rectangular silver plaque stamped ''sterling 925'' in bottom right corner, displaying Mexican and U.S. flags at top over engraved dedication to Peter Pace from Marco Gonzales, affixed to wood back. Rec'd—11/02/2006; Est. Value—$100.00; Location—Pending transfer to GSA.	Admiral Marco Peytro Gonzalez, Secretary of the Navy, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Wood plaque with flags of Mexico and USA (damage; missing piece from center of plaque)—Barcode 992627B—shield shape, painted black, fronted by brass castings of ribbon marked ''ARMADA DE MEXICO'' over bird with snake in beak over crossed anchors, over laurel leaf crescent, over presentation tag to Peter Pace from Mexico Secretary of the Navy. Rec'd—11/02/2006; Est. Value—$425.00; Location—Pending transfer to GSA.	Admiral Marco Peytro Gonzalez, Secretary of the Navy, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Saber, engraved ''General Peter Pace'' Barcode 992635—steel blade with foliate designs on both sides marked ''Carl Eickhorn Solingen'', in black plastic handgrip wrapped in spiral twist wire with silvertone reticulated hand guard including lion head at top with ruby-colored glass eyes, in silvertone scabbard script engraved ''General Peter Pace'', plus goldtone tassel, in carrying box. Rec'd—03/14/2002; Est. Value—$650.00; Location—Pending transfer to GSA.	General of the Army Mihail Popescu, Chief of Defense, Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Women's wristwatch with pink leather band and multi-colored stones around the face—Barcode 992641A—MW, having round mother-of-pearl face with numerals 1, 3, 4, 5, 7, 8, 9, 11, 12, 3 dials at 2/6/10 o'clock positions within silvertone case ornamented with flowers having amber/green/red/clear stones, case back marked MW04A13 and AE00337855, lizard leather band stained pink, buckle stamped ''MW'' in blue leather box. Rec'd—12/28/2005; Est. Value—$1,040.00; Location—Pending transfer to GSA.	General Hamad Bin Ali Al-Attiyah, Chief of Defense of Qatar, Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Men's wristwatch, Du Centaur, black face with black leather band—Barcode 992641B black face marked ''DU CENTAURE'' and genoa assymetric spinnaker'', having dial above 6 o'clock position and second dial near 9/10 o'clock, simulated diamonds within zigzag around chapter ring, 4 more outside bezel, case back marked ''Alpha du Centaure'', black leather strap, in highly polished lidded wood presentation box. Rec'd—12/28/2005; Est. Value—$2,200.00; Location—Pending transfer to GSA.	General Hamad Bin Ali Al-Attiyah, Chief of Defense of Qatar, Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Necklace—small pearls—Barcode 992641C—oval frash water pearls strung on unknotted cord, terminating in gold hook, 17″l, in red leather case marked ''Tiaral, Doha-Qatar''. Rec'd—12/28/2005; Est. Value—$1,112.00; Location—Pending transfer to GSA.	General Hamad Bin Ali Al-Attiyah, Chief of Defense of Qatar, Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Wood chess set #121a—Barcode 992767A—game box, stamped inside ''KURDISTANSANANDAJ'', being a hinged box, the outside convex walls with incarved rosettes and foliage, encompassing inset of 2-tone marquetry chess playing board, the box opening to disclose veneer work and game board plus dice plus wood playing pieces for chess and checkers, 21¼″ square, in custom-made zippered green nylon carrying bag. Rec'd—06/16/2007; Est. Value—$365.00; Location—Pending transfer to GSA.	His Excellency President Jalal Talibani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—#121b Barcode 992767B—Rec'd—06/16/2007; Est. Value—$165.00; Location—Pending transfer to GSA.	His Excellency President Jalal Talibani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—121c Barcode 992767C. Rec'd—06/16/2007; Est. Value—$165.00; Location—Pending transfer to GSA.	His Excellency President Jalal Talibani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Statue of Gold Falcon #135 Barcode 992796—Rec'd—07/31/2007; Est. Value—$3,000.00; Location—Pending transfer to GSA.	His Excellency King Abdullah, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Peter Pace, Chairman of the Joint Chiefs of Staff.	M900 Machine Gun, mounted in wood and glass case—Barcode 992815—Calico M–900, serial #E005385, set in wood brackets against red fabric background with 2 brass tags in Spanish, one stating that this firearm was used August 02, 2006 near Santo Domingo [Colombia] by anti-narcotics troops, other being a presentation tag to Peter Pace dated January 2007, in wood presentation box with glazed lid and gadrooned bottom edge, 5″h x 32¾″ w x 12½″d. Note glued/repaired break in inside curve of butt. Rec'd—01/20/2007; Est. Value—$650.00; Location—Pending transfer to GSA.	Admiral David Moreno, Chief of Defense, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Machine gun, 9mm with removable magazine Barcode 992818—with removable curved magazine, painted black, top of barrel marked ''C 1944 MX 115'', with attached green woven cotton shoulder strap including brown leather buckles. Rec'd—11/03/2006; Est. Value—$650.00; Location—Pending transfer to GSA.	General of the Army, Yurly Niklayevich Baluyevskiy, Chief of Defense, Russia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Nathan Bein, Action Officer, European and NATO Policy.	Cigarette lighter—Barcode 992820—marked ''T. Dupont Paris'' and ''Made in France/Laque de Chine/4FKO1J28'', goldtone, top/bottom and hinge edge of high polish without decoration, ridged turning cylinder friction, mat machine-turned straited elsewhere. Rec'd—05/01/2007; Est. Value—$345.00; Location—Pending transfer to GSA.	Lieutenant General Jovan Lakcevic, Chief of Staff, Montenegro.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Painting of the Secretary of Defense Robert Gates—#178—Barcode 992874—oil on wood roundel, portrait of Robert Gates, wearing burgundy necktie, white shirt, blue jacket, signed/dated ''Erwin 07'' along lower right side, 20″ diameter, mounted on with fabric-covered masonsie, in wood frame. Rec'd—10/06/2007; Est. Value—$900.00; Location—Pending transfer to GSA.	Ivan C. Fernald, Minister of Defense, Suriname.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

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The Honorable Robert Gates, Secretary of Defense.	Wood Sculpture—#175 Barcode 992876—Makonde-style openwork mahogany carving of holes and ''C'' curves, some simulating faces/eyes, 19″h x 15″, pivoting on domed wood based, 7″h x 10″d, base incised ''J.U.06'' and with affixed title tag ''Power of Positive Thinking'' over presentation tag to Robert Gates from Suriname President. Rec'd—10/06/2007; Est. Value—$1,200.00; Location—Pending transfer to GSA.	President Runaldo Ronald Venetiaan, Suriname.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James Clad, Deputy Assistant Secretary of Defense, South & South East Asia.	Black elephant with silver costume wear in a case Barcode 992879—carved wood, apparently ebony, ornamented in silver with applied silver rosettes, plus 26 real purplish red faceted gemstones, including 6 on petal ends of canopy over rosewater sprinkler on pedestal on elephant's back, 5½″h x 4¾″l x 2¼″w, set into purple velor-type stand with presentation tag from General Fonseka of Sri Lanka, in plexiglass case. Rec'd—10/16/2007; Est. Value—$370.00; Location—Pending transfer to GSA.	Lieutenant General GSC Fonseka, Commander of the Sri Lanka Army.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—60″ x 74″ #186 Barcode 992899—Rec'd—10/18/2007; Est. Value—$900.00; Location—Pending transfer to GSA.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Large Green Vase #204 Barcode 992911—crackle glaze celadon, slightly tapered cylinder with wide flaring rim and no neck, front displaying black tiger stripe cat with raised in serpentine and hook shape, 2 columns of black calligraphy on left plus 2 red chop marks, 11¼″h x 8¼″d, plus wood stand, in wood box. Rec'd—11/07/2007; Est. Value—$345.00; Location—Pending transfer to GSA.	His Excellency Kim Jang-Soo, Minister of National Defense, South Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Blue and white large vase—#203a Barcode 992925A—Chinese, ceramic, baluster-shape with lip over narrow short neck, indigo on white, displaying chrysanthemums among leaves on curving vines bounded by band of leaf tips, shoulder band of demilune florets and lappets, bottom band of floral panel, 16½″h x 9½″d, on wood stand, in presentation box. Rec'd—11/05/2007; Est. Value—$380.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Blue and white large vase—#203b Barcode 992925B—Chinese, ceramic, baluster-shape with lip over narrow short neck, indigo on white, displaying chrysanthemums among leaves on curving vines bounded by band of leaf tips, shoulder band of demilune florets and lappets, bottom band of floral panel, 16½″h x 9½″d, on wood stand, in presentation box. Rec'd—11/05/2007; Est. Value—$380.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Secretary of Defense Robert Gates painted inside a glass globe—#203c Barcode 992925C—sphere, clear crystal, 5½″d, interior spherical cavity handpainted on one side with portrait image of white-haired male (Robert Gates) wearing dark necktie, white shirt, dark suit jacket, other side depicting portion of the Great Wall of China bordered by autumnal foliage, on footed wood stand dedicated to Robert Gates dated November 2007, in presentation box. Rec'd—11/05/2007; Est. Value—$800.00; Location—Pending transfer to GSA.	His Excellency General Cao Gangchaun, Minister of Defense, China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Country Plaque—DB#022a Barcode 992369A, brass tone roundel displaying dagger and crossed rifles over row of 4 stars over presenter name, all affixed to wood board with metal foot, in presentation box. Rec'd—01/17/2007; Est. Value—$125.00; Location—Pending transfer to GSA.	His Excellency Abdul Rahim Wardak, Minister of National Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Afghan Rug—DB#022b Barcode 992369B—wool pile, hand woven, featuring 2 rows of 6 medallions each in rust/indigo/tan, on tan field alternating with "X" motif, surrounded by 5 primary borders of which the third displays "fleches" (arrowheads), end panels friezes, 53″ x 82″ pile area, excluding fringe. Rec'd—01/17/2007; Est. Value—$400.00; Location—Pending transfer to GSA.	His Excellency Abdul Rahim Wardak, Minister of National Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

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The Honorable Robert Gates, Secretary of Defense.	Gold Jambaya—DB# 023 Barcode 992370—Jambaya (knife with curved blade in waisted handle) the gold-tone handle displaying rosettes of spiral twist wire, 7 diamond shapes on handle end, 10¾″ 1, in gold-tone elbow-shape sheath displaying scrollwork upper panel, spiral twist wrapping, white leather backing, plus rings. Both handle and sheath stamped ''875'' (indicating 21K gold) both handle and sheath also stamped ''AL–MANNAI''. In presentation box with Bahraini emblem and presentation plaque from King of Bahrain to Robert Gates. Rec'd—01/17/2007; Est. Value—$3,200.00; Location—Pending transfer to GSA.	His Excellency King Abdullah bin Abdul al-Saud, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Decorative Silver Plate #026a Barcode 992372 round porcelain plate stamped on back ''Kutahya Hand Made 2002 Hatice Ar.'' Front displaying Turkish military emblem in red surrounded by silver-tone Scrollwork and blue rimmed marked ''Ministry of National Defense'', the plate mounted in silver-tone surround with repoussé floral band, 15½″ h, in presentation box with dedication plaque. Rec'd—01/26/2007; Est. Value—$210.00; Location—Pending transfer to GSA.	His Excellency Vecdi Gonul, Minister of National Defense, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Silver Candle Stick Holders #026b Barcode 992372B pair of sterling silver candlesticks, bottom interior of socket stamped ''DAMAR 925'', each stick having bobeche over cylindrical socket over waisted section, over tapered cylinder, over ring, over domed foot with repoussé lobes and applied two flowers and 6 leaves, 7¾″h x 3⅝″d in presentation box. Rec'd—01/26/2007; Est. Value—$240.00; Location—Pending transfer to GSA.	His Excellency Vecdi Gonul, Minister of National Defense, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Silver Vase #026c Barcode 992372C vase, Sterling silver (bottom stamped ''SAMI 925''), having 4-lobed rim with applied foliate scrollwork, waisted neck, inverse baluster shape baluster with 4 repoussé floral cartouches, flaring foot, 10″h x 5¼″d, in presentation box. Rec'd—01/26/2007; Est. Value—$290.00; Location—Pending transfer to GSA.	His Excellency Vecdi Gonul, Minister of National Defense, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

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The Honorable Robert Gates, Secretary of Defense.	Rug—#031 Barcode 992376 Rug, Afghani, wool pile, hand-woven, 18 x 20 = 360 knots per square inch, displaying 30 rows of Tekke-style octagonal gul in white/red/black alternating with rows of crosses with flaring ends, on wine white red field, surrounded by 29 borders including 4 forms with white outline, 120″ x 150″ pile area excluding fringe. Rec'd—12/29/2006; Est. Value—$5,600.00; Location—Pending transfer to GSA.	His Excellency Hamid Karzi, President of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Gordon England, Deputy Secretary of Defense.	Silver Vase #D093 Barcode 992377 Vase, sterling silver, bottom stamped ''SAMI 925'' plus 5-pointed star, all within circle, baluster shape, flaring rim of 4 propellers-blade shape lobes over waisted neck, over spherical body with repoussé drapery garlands and 4 applied ribbon bows, 7¾″ h x 5″ in presentation box. Rec'd—02/02/2007; Est. Value—$420.00; Location—Pending transfer to GSA.	His Excellency Vecdi Gonul, Minister of National Defense, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Edmund P. Giambastiani, Vice Chairman Joint Chiefs of Staff.	Afghan hand woven rug Barcode 992383 Rug, Afghani, wood pile, hand-woven, 10 x 12 = 120 knots per square inch, displaying 2 rows of 7 octagonal guls each, each gul consisting of bars/triangles/trapezoids/hooks in red/indigo/pumpkin/ivory, alternating with rows of smaller asterisk-shape gul on indigo line, on tan field surrounded by 5 major borders, of which the third predominates in arrow heads (''flechettes'') on ivory, 52″ x 79″ pile area, excluding kilim ends and fringe. Rec'd—02/04/2007; Est. Value—$400.00; Location—Pending transfer to GSA.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan, Kabul, Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Jewelry box #042 Barcode 992395 Box, Korean, rectangular, entire outside displaying elaborate mother-of-pearl inlay in lacquer, lid with 4-lobed center cartouche of birds in water, outside walls of ducks or flying birds, black interior with lift out tray, slightly hyper-extending base frame, 6″h x 10¾″l w x 14⅜″d. Note presentation plaque inside lid. Rec'd—02/23/2007; Est. Value—$390.00; Location—Pending transfer to GSA.	His Excellency Jang Soo Kim, Minister of Defense, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

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Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Book—about the history of the Montenegrin Army Barcode 992482F—hardcover ''The Montenegrin Army'' by Tatjana Jovic and Milan Jovicevic. Rec'd—03/29/2007; Est. Value—$45.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Book—about the Montenegrin sovereign defense posture—Barcode 992482G—hardcover, ''Five Years Sovereign Defence of the Republic of Macedonia''. Rec'd—03/29/2007; Est. Value—$25.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General William M. Frazier III, Assistant to the Chairman of the Joint Chiefs of Staff.	Men's steel Concord watch Barcode 992408—Wristwatch, Concord, Men's LaScala, no.1316531, truncated ellipsoid engine-turned face with numeral 12, wedges indicating 1, 4–8, 11 o'clock, dials at 2 o'clock and 10 o'clock positions, third band; in kidskin-lined presentation box. Rec'd—03/06/2007; Est. Value—$2,800.00; Location—Pending transfer to GSA.	His Excellency King Abdullah bin Abdul-Aziz al-Saud, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Peter Rodman, Assistant Secretary of Defense for International Security Affairs.	Jordanian Ceremonial Sword Barcode 992430—Saber, steel blade with acid-etched foliate scroll designs, gold-tone (apparently gold-plated) hilt as continuous ''C'' curve with stamped roundel of crown over crossed sabers, flanked by scrollwork, leather handgrip, knob over oval cap end, 36½″l in leather clad sheath with apparent brass and gold-plated mounts; in handled carrying case with presentation plaque. Rec'd—11/07/2006; Est. Value—$485.00; Location—Pending transfer to GSA.	General Khalid Al Sarayreh, Chairman of the Joint Chief of Staff, Jordan Armed Forces.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Glass Bowl DB #051 Barcode 992445—Pedestal bowl, Czech, ruby glass over clear glass, by Egermann. Limited edition 16/30, designed by Stephan Benec, accompanied by edition no. 9805/29/28867, having 10 scalloped lobes over 5 oval medallion scenes of castle/stag/horse/stag/bird alternating with floral groups, one band of dots and foot of similar designs, script signed ''S Benec'' on foot, 10″h x 11⅜″. Rec'd—03/09/2007; Est. Value—$1,500.00; Location—Pending transfer to GSA.	His Excellency Vaclav Klaus, President, Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Kenneth J. Krieg, Under Secretary of Defense, Acquisition, Technology and Logistics presented to Mrs. Anne Krieg.	Ladies Fila Ski Jacket and Pant Barcode 992457A—consisting of white zippered turtleneck-style jacket with black band around each upper arm, size M, plus black pants size M. Rec'd—02/10/2007; Est. Value—$165.00; Location—Pending transfer to GSA.	Lieutenant General Gianni Botondi, Secretary General of Defense and National Armaments, Director, Rome, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Kenneth J. Krieg, Under Secretary of Defense, Acquisition, Technology and Logistics.	Men's Fila Ski Jacket and Pant Barcode 992457B—consisting of blue zippered turtleneck-style jacket with white band on zippered chest pocket, plus blue hood, size L, plus black pants, size L. Rec'd—02/10/2007; Est. Value—$190.00; Location—Pending transfer to GSA.	Lieutenant General Gianni Botondi, Secretary General of Defense and National Armaments, Director, Rome, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—DB#069a BC 992463A—Egyptian, polished cotton, 24 x 22 = 528 knots per square inch, displaying rectilinear crescent/rosette/diamonds in turquoise/pink/burgundy on black field surrounded by 5 primary border of which the third predominates in rosettes with scrollwork square within brackets on burgundy, 50″ x 32″, excluding fringe. Rec'd—04/18/2007; Est. Value—$350.00; Location—Pending transfer to GSA.	Field Marshal Hussein Tantawy, Minister of Defense of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Gold Statue of the Combat Chariot DB#069b Barcode 992463B—gold tone cast metal chariot with rider holding spear, pulled by prancing horse with plumed mane, 7½″h x 11½w x 4″d, affixed to black rectangular base with plaque ''Combat chariot'' and presentation tag plus plexiglass cover. Rec'd—04/18/2007; Est. Value—$240.00; Location—Pending transfer to GSA.	Field Marshal Hussein Tantawy, Minister of Defense of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Honorable Robert Gates, Secretary of Defense.	Gold Bracelet DB #069c Barcode 992463C—consisting of 8 yellow gold oviods stamped ″ ″ in Arabic (indicating 18K gold), each with 3 dimensional scarab beetle having body of turquoise or lapis lazuli, terminating in round pressure clasp ring. Rec'd—04/18/2007; Est. Value—$290.00; Location—Pending transfer to GSA.	Field Marshal Hussein Tantawy, Minister of Defense of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Country Plaque—DB#069d Barcode 992463D—rectangular silver tone, with affixed brass roundel ''Egyptian Armed Forces'' on right, red/white/black enamel banner in middle, and brass tone chariot/horses on left. Rec'd—04/18/2007; Est. Value—$85.00; Location—Pending transfer to GSA.	Field Marshal Hussein Tantawy, Minister of Defense of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

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The Honorable Robert Gates, Secretary of Defense.	Dagger #073 Barcode 992470—having curved ribbed steel blade secured in waisted black wood handle with inset silvertone reticulate crown on each side, 12¼″l, in black leatherclad sheath with silvertone mounts, in leather presentation case. Rec'd—04/17/2007; Est. Value—$345.00; Location—Pending transfer to GSA.	His Majesty King Abdullah bin-al Hussein, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John Hill, Principal Director, Asian Pacific Security Affairs, East Asia.	Green and Gold Vase Barcode 992480—Taiwanese, ceramic, ovoid, having goldtone rim/waisted neck/shoulder, plus goldtone leaves/flowers against green background, 15½″ h x 6½″ d, accompanied by carved round wood stand; in presentation box. Artist listed Chao-chung Hsu, an award winning Taiwanese artist. Rec'd—03/23/2007; Est. Value—$380.00; Location—Pending transfer to GSA.	Jye Lee, Minister of Defense, Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mary Beth Long, Acting Assistant Secretary of Defense for International Affairs.	Wooden Chess Set Barcode 992481—Game box, interior marked ''Kurdastan-Sanandaj'', marquetry of multipke types of wood, having ridge lined playing board for chess/checkers, outside edge of incarved rosettes/leaves, 21½″ square, plus turned wood playing pieces; in green nylon zippered carrying bag. Rec'd—04/20/2007; Est. Value—$365.00; Location—Pending transfer to GSA.	President Jalal Talibani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Pearl Necklace Barcode 992482A—jewelry set consisting of necklace of graduated round faux pearls known as ''Ohrid Pearls'' made by the Talev Family of Macedonia, plus pair of earrings, each with on similar faux pearl on hook. Rec'd—03/29/2007; Est. Value—$90.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Photo book—about the best attractions in Montenegro—Barcode 992482H—hardcover, ''Montenegro''. Rec'd—03/29/2007; Est. Value—$55.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Jewelry box #083a Barcode 992492A—rectangular, black lacquer, lid displaying prunus blossoms and maple leaves in 3 goldtone/purple/pink rectangles. Rec'd—04/30/2007; Est. Value—$265.00; Location—Pending transfer to GSA.	His Excellency Kyuma, Minister of Defense, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Baseabll bat signed by a NY Yankee #083b Barcode 992492B—''Mizuno Pro Matsui'', written dedication ''To Robert Michael Gates/Secretary of Defence''. Rec'd—04/30/2007; Est. Value—$125.00; Location—Pending transfer to GSA.	His Excellency Kyuma, Minister of Defense, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Pencil and Pen Set inscribed with ''Parliament, Republic of Montenegro'' Barcode 992482B—the fountain pen with nib marked ''Huahoug 22KGP'', in presentation box including presentation tag inside lid. Rec'd—03/29/2007; Est. Value—$55.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Organizer and notebook 9¾″ x 7½″ with small Montenegrin seal Barcode 992482C—notebook with black leather binding stamped in goldtone ''Parliament of the Republic of Montenegro'' surmounted by goldtone plastic crowned double eagle, accompanied by attached red/gold marking ribbon. Rec'd—03/29/2007; Est. Value—$100.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Traditional Montenegrin black and red cloth hat, embroidered Montenegrin seal on the top Barcode 992482D—hat black, round, fabric, top goldtone crowned double-headed eagle against red background, 2¾″ h x 7½″ d. Rec'd—03/29/2007; Est. Value—$35.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Daniel Fata, Deputy Assistant Secretary of Defense, European and NATO Policy.	Gold Mask, flat sheet Barcode 992482E—goldtone mask having band of square bracket scrolls on the face with ellipsoid eyes, bar mouth, flanked by spiral bands, in frame made by Anastas Dudan. Rec'd—03/29/2007; Est. Value—$90.00; Location—Pending transfer to GSA.	His Excellency Lazar Elenovski, Minister of Defense, Macedonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Silver Ceremonial Sword #085 Barcode 992494—Jambaya, curved polished metal blade with center ridge, secured in silver filigree with 3 round carnelian cabochons, 27″ l, in presentation box. Rec'd—05/01/2007; Est. Value—$490.00; Location—Pending transfer to GSA.	His Excellency Saleh, President, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Robert Gates, Secretary of Defense.	Wooden Chess Set #077 BC#992504—light wood stained dark including high relief carving of rosettes and leaves on sides, plus polished marquetry playing board, opening to disclose light color and dark-stained playing pieces for chess and backgammon/checkers; in zippered cusom fitted green nylon bag. Rec'd—04/20/2007; Est. Value—$325.00; Location—Pending transfer to GSA.	President Jalal Talibani, President of Iraq.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Jeffrey B. Kohler, Executive Officer, Defense Security Cooperation Agency.	Men's Concord Impressario Watch Barcode 992505—round white face with date window at 3 o'clock position, VI/IX/XII Roman numerals, silvertone flex band. Rec'd—02/19/2007; Est. Value—$2,800.00; Location—Pending transfer to GSA.	Major General Duaij Salman Al Khalifa, Country Unknown.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—#113 Barcode 992508—wool pile, handwoven featuring square flanked by triangles of fleur-de-lys plus "C" curves in black/brown/brown/red/tan, surrounded by 2 borders of similar design in red on white and black on red. Rec'd—06/05/2007; Est. Value—$1,100.00; Location—Pending transfer to GSA.	General Lieutenant Ismail Isakovich Isakov, Minister of Defense, Kyrgyzstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Robert Gates, Secretary of Defense.	Rug—#111 Bacode 992523—wool pile, hand woven, field displaying triangles surrounded by 11 borders, all in brown/beige/blue, 62″ x 71″, excluding fringe. Rec'd—06/04/2007; Est. Value—$350.00; Location—Pending transfer to GSA.	His Excellency Abdul Rahim Wardak, Minister of Defense of the Islamic Republic of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Plaque—Barcode 992528A—plaque, wood rectangle fronted by brasstone emblem of dagger/crossed anchor/wings over presentation tag to Peter Pace from Bulgarian General Stoykov; leatherclad presentation box. Rec'd—04/05/2007; Est. Value—$35.00; Location—Pending transfer to GSA.	General Zlatan Stoykov, Chief of Defense of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Dagger—Barcode 992528B—steel blade engraved "ALAT II Y ECT" flanked by foliate arabesques, secured in ivory-color plastic handle spiral wrapped in brass twined metal, handle end of cross over crown having 8 bars, bottom end of handle of reticulated brass band over hilt of rampant lion on one side. Rec'd—04/05/2007; Est. Value—$365.00; Location—Pending transfer to GSA.	General Zlatan Stoykov, Chief of Defense of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Pen Set silver, pens shaped like feathers—Barcode 992585A—desk set stamped "925" (indicating sterling silver), consisting of rectangular ink stand on toed feet with wings, concave wells, top with domed inkwell including reticulated scrollwork flanked by flower bud holders, each holding feather-shaped plume, 8″l, the stand 6″ h x 8″ w x 4½″ w; in hinged lid wood presentation box. Rec'd—03/24/2006; Est. Value—$465.00; Location—Pending transfer to GSA.	General Ilker Basbug, Commander, Turkish 1st Army, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Wooden Plaque with relief of Turkish fortress—Barcode 992585B—plaque pressboard stained as walnut fronted by cast resin relief scene of a quadrate fortress with quadrate tower at each corner in foreground, numerous buildings across the water in the background, over presentation tag to Pace from Basbug, 9″h x 10⅝″w; in presentation box. Rec'd—03/24/2006; Est. Value—$65.00; Location—Pending transfer to GSA.	General Ilker Basbug, Commander, Turkish 1st Army, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
General Peter Pace, Chairman of the Joint Chiefs of Staff.	Pen set silver inkwell Barcode 992586—inkstand, sterling silver, rectanglar based on 4 splayed bracket feet, supporting 2 pen cup holders, each with fountain pen having German nib and silver shank, flanking quadrate clear crystal inwkwell with hinge dome lid with rosette on cap; 7½″w x 4½″d; in presentation box, with presentation tag from Buyukanit of Turkey. Rec'd—02/15/2007; Est. Value—$565.00; Location—Pending transfer to GSA.	General Yasar Buyukanit, Chief of Defense, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF EDUCATION

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Margaret Spellings, Secretary of Education.	Holiday gift basket from Neiman Marcus ("Pasta Gift Basket"). Rec'd—14–Dec–07; Est. Value—$348.00; Location—Disposition: To Department of Education kitchen for use at official Department events (Cathy del Duca).	His Excellency Saqr Ghobash, Ambassador of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF NAVY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral Gary Roughead, Chief of Naval Operations.	1914 British Enfield Rifle & magazine. Rec'd—27–Oct–07; Est. Value—$500.00; Location—Being retained by CNO for display.	Rear Admiral Muhammad Jawad Leader, Iraqi Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen and Spouse, Chief of Naval Operations.	Large ornate wooden chest, ornate blue and white floral vase and ornate fabric. Rec'd—16–Apr–07; Est. Value—$460.00; Location—Being retained at CNO (DNS 35) pending transfer to GSA.	Admiral M Azfal Tahir Ni(M), Chief of Naval Staff, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chief of Naval Operations.	Singapore Skycrapers—etched wood art. Rec'd—24–Jul–07; Est. Value—$390.00; Location—Being retained at CNO (DNS 35) pending transfer to GSA.	Rear Admiral Ronnie Tay, Chief of Navy, Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen and Spouse, Chief of Naval Operations.	1. Vel Statue of St. George slaying the dragon; 2. Jewelry box with Russian building painted on it; 3. Russian Ladies Bracelet. Rec'd—24–Aug–07; Est. Value—$406.00; Location—Being retained at CNO (DNS 35) pending transfer to GSA.	Fleet Admiral Vladimir Vasilyevich Masorin, Commander in Chief Russian Federation Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chief of Naval Operations.	Book of engravings ''Piraeus and Ports of Mediterranean Sea''. Rec'd—15–May–07; Est. Value—$979.00; Location—Being retained at CNO (DNS 35) pending transfer to GSA.	Admiral Panagiotis Chinofotis, Chief Helenic National Defense General Staff.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chief of Naval Operations.	''The Art of War''—Gold Edition Book. Rec'd—16–Aug–07; Est. Value—$1,708.00; Location—Being retained at CNO (DNS 35) pending transfer to GSA.	Admiral Xu Commander, Shanghai Naval Base.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chief of Naval Operations.	Two Kagame crystal wine glasses. Rec'd—2–Nov–06; Est. Value—$312.00; Disposition—Transferred to General Services Administration.	Admiral Eiji Yoshikawa, Chief of Staff, Japanese Maritime Self Defense Force Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Admiral Michael G. Mullen, Chief of Naval Operations.	1. 12″ Sword in black velour box; 2. Book—''Bulgaria Illustrated History''. Rec'd—9–Nov–06; Est. Value—$322.00; Disposition—Transferred to General Services Administration.	Rear Admiral Minko Kavaldzhiev, Commander in Chief, Bulgarian Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Nevin P. Carr DIR, Navy International Programs Office.	Men's quartz watch. Rec'd—17–Nov–07; Est. Value—$325.00; Location—Being retained by DIR, IPO for official use pending purchase.	Rear Admiral Fhd Ahmed Al-Kayyal CDR, Royal Saudi Naval Forces Eastern Fleet Command.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice Admiral Mark J. Edwards, Chief of Naval Operations Communication Networks.	New Zealand Navy picture. Rec'd—27–May–07; Est. Value—$600.00; Location—Being retained by CNO Communications Networks for official use.	Commodore David Anson, Royal New Zealand Navy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral James D. Kelly, COMNAVFORJAPAN.	Hand engraved sword. Rec'd—16–Feb–07; Est. Value—$9,167.00; Location—Being retained by COMNAVFORJAPAN for official use.	Master Sword Engraver Yanigamura.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF NAVY—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Allen G. Meyers CDR, Carrier Strike Group EIGHT.	1. Gold and pearl bracelet; 2. Gold and green slippers; 3. Black sheer overgown with pouch 4. perfume in pouch 5. One turquoise and one tan cloth 6. Sheer black and pink table cloth 7. "Welcome to Kuwait—A Visitor's Guide and "Kuwait Traditions—Creative Expressions of Culture" books. Rec'd—18–Dec–06; Est. Value—$804.00; Disposition—Transferred to General Services Administration.	Waleed Fahel Al-Fadhel Ministry of Awqaf, Assistant Undersecretary for Cultural Affairs.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Allen G. Meyers CDR, Carrier Strike Group EIGHT.	1. Gold and pearl bracelet; 2. Gold and green slippers; 3. Black sheer overgown with pouch 4. perfume in pouch 5. One turquoise and one tan cloth 6. Sheer black and pink table cloth 7. "Welcome to Kuwait—A Visitor's Guide and "Kuwait Traditions—Creative Expressions of Culture" books. Rec'd—18–Dec–06; Est. Value—$804.00; Disposition—Transferred to General Services Administration.	Waleed Fahel Al-Fadhel Ministry of Awqaf, Assistant Undersecretary for Cultural Affairs.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF NAVY

[Report of Travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Admiral Henry G. Ulrich Commander U.S. Naval Forces Europe/Commander, Allied Joint Forces Command, Naple and six accompanying staff members.	Expended for hotels and meals. Rec'd—April 17–18, 2007; Est. Value—$2,315.46.	Admiral Panagiotis Chinifotis, Chief Hellenic National Defense General Staff.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Jeffrey L. Fowler Commander Submarine Group EIGHT and four accompanying staff members.	Expended for hotels and meals. Rec'd—January 21–25, 2007; Est. Value—$2,729.00.	Rear Admiral Sedger Dulger, COMSUBTURGROUP Rear Admiral Celal Parlakoglu, COMTURNAVAKBASE and Rear Admiral Bulent Bostanoglu COMTURFLEET.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Jeffrey L. Fowler Commander Submarine Group EIGHT and four accompanying staff members.	Expended for hotels and meals. Rec'd—March 14–15, 2007; Est. Value—$1,668.00.	Captain Eutihios Nikolidakis, COMHELSUB.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rear Admiral Jeffrey L. Fowler Commander Submarine Group EIGHT and four accompanying staff members.	Expended for hotels and meals. Rec'd—March 14–15, 2007; Est. Value—$1,668.00.	Captain Eutihios Nikolidakis, COMHELSUB.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brigadier General Daniel P. Woodward, Director of Regional Affairs.	Rolex Watch, Oyster Perpetual Date, Submariner. Rec'd—May 5, 2007; Est. Value—$5,490.00; Disposition—Transferred to GSA on December 13, 2007.	Mohammed Abdullah al-Ayeeshe, Major General, Deputy Commander, Royal Saudi Air Force, Riyadh, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel William G. Hampton, Chief, Gulf Cooperation Council Division.	Hugo Watch, Metropolis Initial Stainless Steel. Rec'd—May 14, 2007; Est. Value—$678.67; Disposition—Transferred to GSA on December 13, 2007.	Mohammed Abdullah al-Ayeeshe, Major General, Deputy Commander, Royal Saudi Air Force, Riyadh, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Major James Fisher Saudi Arabia Country Director.	Hugo Watch, Metropolis Initial Stainless Steel. Rec'd—May 14, 2007; Est. Value—$678.67; Disposition—Transferred to GSA on December 13, 2007.	Mohammed Abdullah al-Ayeeshe, Major General, Deputy Commander, Royal Saudi Air Force, Riyadh, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant General Gary L. North, Commander, United States Central Air Force Command.	Raymond Weil Watch. Rec'd—May 1, 2007; Est. Value—$1,083.00; Disposition—Pending transfer to GSA.	Colonel Mahash Saeed Salem Al Hamel. Chief of Security and Chief of the Unmanned Aeriel Vehicles Operations Division.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Gregory A. Kerns, Previous Commander, 380th Air Expeditionary Wing.	Ladies Chessica Square Watch; Gents Chessica Square Watch; Gents Ambassadeur Watch. Rec'd—5 June, 2007; Est. Value—$1,602.35; Disposition—Transferred to GSA on December 13, 2007.	Colonel Mahash Saeed Salem Al Hamel. Chief of Security and Chief of the Unmanned Aeriel Vehicles Operations Division.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Gregory A. Kerns, Previous Commander, 380th Air Expeditionary Wing.	Isfahan Rug. Rec'd—5 June, 2007; Est. Value—$893.00; Location—Rug is displayed at the Al Dhafra Air Base Chapel for official use.	Colonel Mahash Saeed Salem Al Hamel. Chief of Security and Chief of the Unmanned Aeriel Vehicles Operations Division.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lieutenant Colonel Scott H. Remington, Individual Mobilization Augmentee to the Director, Air Force Office of Special Investigations.	Longines Watch, La Grande Classique. Rec'd—5 June, 2007; Est. Value—$437.50; Location—Recipient purchased watch through GSA.	Lieutenant Colonel Rezgar Barzani of Iraq, Kurdistand Regional Government, Parastin Intelligence Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Michael G. Cosby, 363 Training Commander.	Breitling Professional B–1 Gentleman's Watch. Rec'd—28 June, 2007; Est. Value—$2,919.00; Disposition—Pending transfer to GSA.	Major General Mohammed Sowaidan Al-Gimzy, United Arab Emirates Air Force Chief of Staff.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Mark Solo, Chief, Office of Military Cooperation—Kuwait.	Panasonic Lumix DMC–FX9 Digital Camera. Rec'd—6 May, 2007; Est. Value—$398.00; Location—Camera will be utilized at the command for official use.	Lieutenant General Fahed Al-Amir, Chief of Staff, Kuwait Armed Forces, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brigadier General Mark Solo, Chief, Office of Military Cooperation—Kuwait.	Kuwait Tea Set. Rec'd—6 May, 2007; Est. Value—$42.00; Disposition—Transferred to GSA on December 13, 2007.	Lieutenant General Fahed Al-Amir, Chief of Staff, Kuwait Armed Forces, State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colonel Cassandra R. Salvatore, 376 Expeditionary Medical Group, Kyrgyz Republic.	Large painting of a Kyrgyz mountain scene. Rec'd—8 November, 2007; Est. Value—$305.00; Location—Picture is displayed at the Manas Air Base Medical Treatment Facility.	Dr. Sabyrek Djumabekov, Chief of Orthopaedy and Traumatology, Kyrgyz Medical Academy, Kyrgyz Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Mr. Bruce Lemkin, Deputy Under Secretary of the Air Force, International Affairs.	Concord Saratoga Chronograph Men's Watch. Rec'd—11 November, 2007; Est. Value—$1,076.00; Disposition—Pending transfer to GSA.	Brigadier Mubarak Mohammed Al Kuwait Al Kharayin, Qatari Air Chief, State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE INTERIOR

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Honorable Dirk Kempthorne, Secretary, U.S. Department of the Interior.	Glass Art. Rec'd—7–May–07; Est. Value—$750.00; Location—Disposition—on display, Secretary's Immediate Office for Official Use.	Lord Major Campbell Newman, Government Official from Brisbane, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kathryn Washburn, Secretary's Immediate Office.	Pearl Necklace. Rec'd—30–Jan–07; Est. Value—$644.00; Location—General Services Administration, Forestall Vault, GE–233.	Minister Sun Wensheng, Chinese Minister of Land and Resources.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Henry M. Paulson, Jr., Secretary of Treasury.	Green leather-covered Bernard-Richards desk clock. Rec'd—20–Sep–07; Est. Value—332.29; Location—Treasury retained for Official Use on October 9, 2007.	His Excellency Nicolas Sarkozy, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Kimmitt, Deputy Secretary.	Three Commemorative Medallions (gold, silver, bronze) of Prime Minister Rafic Harri. Rec'd—11–Oct–07; Est. Value—765.26; Location—Treasury retained for Official Use on November 8, 2007.	His Excellency Saad Hariri, Member of Parliament of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
5 U.S.C. § 7342(f)(4), as amended.	Rug—5′ × 3′ silk on silk, ivory field with round doubly terminated medallion and floral & fliate scrolling, tan astragals, six borders with rust main, Pakistan, 20th/21st century. Rec'd—11–Mar–07; Est. Value—$750; Disposition—for Official Use.	5 U.S.C. § 7342(f)(4), as amended	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. ENVIRONMENTAL PROTECTION AGENCY

[Report of Travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Philip Berger, Hydrologist, Office of Ground Water and Drinking Water.	Transportation to and from DC to Prague, Brno and Lednice, Czech Republic; meals and accommodation in Lednice, Czech Republic. Rec'd—April 30 to May 10, 2007; Est. Value—$1,200.00.	Professor Petr Hlavinek, Brno University of Technology, via a grant from North Atlantic Treaty Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: U.S. ENVIRONMENTAL PROTECTION AGENCY—Continued

[Report of Travel]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Anna Coutlakis, Senior Policy Advisor, Office of Pollution Prevention, Pesticides and Toxics.	Standard single room for three nights at the Jiuhua Resort and Convention Center, Beijing ChangPing Xiao Tang. Rec'd—December 11 to 13, 2007; Est. Value—$279.69.	Honorable Nei Jinglie, Chinese State Environmental Protection Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Anna Coutlakis, Senior Policy Advisor, Office of Pollution Prevention, Pesticides and Toxics.	Shuttle service to and from Beijing Airport. Rec'd—December 11 to 13, 2007; Est. Value—$50.00.	Honorable Nei Jinglie, Chinese State Environmental Protection Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vince Nabholz, Senior Biologist, Office of Pollution Prevention, Pesticides and Toxics Substances.	Standard single room for three nights at the Jiuhua Resort and Convention Center, Beijing ChangPing Xiao Tang. Rec'd—December 11 to 13, 2007; Est. Value—$279.69.	Honorable Nei Jinglie, Chinese State Environmental Protection Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vince Nabholz, Senior Biologist, Office of Pollution Prevention, Pesticides and Toxics Substances.	Shuttle service to and from Beijing Airport. Rec'd—December 11 to 13, 2007; Est. Value—$50.00.	Honorable Nei Jinglie, Chinese State Environmental Protection Agency.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hugh Barton, Toxicologist	Travelers cheques to cover cost of 2.5 days of lodging, meals and per diem. Rec'd—November 5 to 7, 2007; Est. Value—$1100.	World Health Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sarah Froman, Presidential Management Fellow, Office of Air and Radiation.	Airfare and lodging for four trips as part of Presidential Management Intern Fellowship detail to Environmental Protection Agency Victoria in Melbourne, Australia. Rec'd—March 8 to 9, 2007; Est. Value—$415.00.	Honorable Terry A'Hearn, Director, Sustainability Directorate, Environment Protection Authority of Victoria, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sarah Froman, Presidential Management Fellow, Office of Air and Radiation.	Airfare and lodging for four trips as part of Presidential Management Intern Fellowship detail to Environmental Protection Agency Victoria in Melbourne, Australia. Rec'd—April 3 to 5, 2007; Est. Value—$509.00.	Honorable Terry A'Hearn, Director, Sustainability Directorate, Environment Protection Authority of Victoria, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sarah Froman, Presidential Management Fellow, Office of Air and Radiation.	Airfare and lodging for four trips as part of Presidential Management Intern Fellowship detail to Environmental Protection Agency Victoria in Melbourne, Australia. Rec'd—June 3 to 6, 2007; Est. Value—$395.00.	Honorable Terry A'Hearn, Director, Sustainability Directorate, Environment Protection Authority of Victoria, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kirsten Cappel, Environmental Protection Specialist, Office of Air and Radiation.	Meals, local transportation, airport tax, other incidentals. Rec'd—May 21 to 25, 2007; Est. Value—$444.00.	United Nations Environment Programme.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Michael Brody, Senior Environmental Scientist, Office of the Chief Financial Officer.	Airfare to and from Ukraine, transportation within Ukraine, hotels and meals. Rec'd—June 2 to 10, 2007; Est. Value—$5,137.00.	World Bank	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chao Chen, Biostatistician, ORD	Airfare, hotel, meals. Rec'd—May 22 to 25, 2007; Est. Value—$2,721.00.	North Atlantic Treaty Organization	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Federal Register

Monday,
December 22, 2008

Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8753–5]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 24, 2008, EPA promulgated amendments to the Standards of Performance for Petroleum Refineries and new standards for process units constructed, reconstructed, or modified after May 14, 2007. EPA received three petitions for reconsideration of the final rule. On September 26, 2008, EPA granted reconsideration and issued a stay for the issues raised in the petitions regarding process heaters and flares. In this action, EPA is addressing those specific issues by proposing amendments to certain provisions for process heaters and flares. EPA is also proposing various technical corrections in this action that were raised in the petitions for reconsideration. EPA will take action on other issues raised by Petitioners in future notices.

DATES: Comments must be received on or before February 5, 2009.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 2, 2009 public hearing will be held on January 6, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0011, by one of the following methods:

- *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–2007–0011.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2007–0011.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0011. Please include a total of two copies.
- *Hand Delivery or Courier:* EPA Docket Center (2822T), 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2007–0011. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, Standards of Performance for Petroleum Refineries Docket, EPA West Building, 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 Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	32411	Petroleum refiners.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.100 and 40 CFR 60.100a. If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2007–0011. 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 is 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 *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 by January 2, 2009, a public hearing will be held on January 6, 2009. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Bob Lucas, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing. 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.

E. How is this document organized?

The supplementary information presented in this preamble is organized as follows:

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II. Background Information

A. Why are we proposing these amendments?

Standards of performance for petroleum refineries were promulgated on June 24, 2008 that included: (1) Final amendments to the existing petroleum refineries new source performance standards (NSPS) in 40 CFR part 60, subpart J; and (2) a new petroleum refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRA), and the Western States Petroleum Association (WSPA) (collectively referred to as ''Industry Petitioners'') requested an administrative stay under Clean Air Act (CAA) section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja (Docket Item EPA–HQ–OAR–2007–0011–245). On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of 40 CFR part 60, subpart Ja for which they had previously requested a stay (Docket Item EPA–HQ–OAR–2007–0011–267). Specifically, Industry Petitioners requested that EPA reconsider the following provisions in subpart Ja: (1) The newly promulgated definition of ''modification'' for flares (40 CFR 60.100a(c)); (2) the definition of ''flare'' (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flares (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d) and (e)); and (6) the nitrogen oxide (NO_X) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on August 21, 2008, Industry Petitioners identified additional issues for reconsideration (Docket Item EPA–HQ–OAR–2007–0011–246). Industry Petitioners identified a number of issues with the standards for fluid catalytic cracking units (FCCU), fluid coking units (FCU), fuel gas combustion devices, sulfur recovery plants, and delayed coking units. The issues ranged from disagreeing with the best demonstrated technology (BDT) analyses for FCCU/FCU and delayed coking units to requests for clarification of requirements regarding averaging times for various limits, to identifying inconsistencies in compliance methods, to simple typographical errors. A total of 82 items were identified in this submittal.

On August 25, 2008, HOVENSA, LLC (''HOVENSA'') filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) The NO_X limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of ''flare'' and ''modification'' (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); and (3) the depressurization work practice standard for delayed coking units (40 CFR 60.103a(c)) (Docket Item No. EPA–HQ–OAR–2007–0011–247). The petition also requested that EPA stay the

effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural Resources Defense Council (''Environmental Petitioners'') requesting that EPA reconsider several aspects of 40 CFR part 60, subpart Ja (Docket Item No EPA–HQ–OAR–2007–0011–243). The petition identified the following issues for reconsideration: (1) EPA's decision not to promulgate standards for carbon dioxide (CO_2) and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); (3) the NO_X limit for FCCU (40 CFR 60.102a(b)(2)); and (4) the particulate matter (PM) limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners, Environmental Petitioners did not seek a stay of these provisions during reconsideration.

On September 26, 2008, EPA issued a **Federal Register** notice (73 FR 55751) granting reconsideration of the following issues: (1) The newly promulgated definition of ''modification'' for flares; (2) the definition of ''flare;'' (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flares; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO_X limit for process heaters. EPA also granted Industry Petitioners' and HOVENSA's request for a 90-day stay for those same provisions under reconsideration. In this action, EPA is addressing those issues for which it granted reconsideration and a stay as outlined in the September 26 notice. We are also addressing certain other minor issues raised by Industry Petitioners in this action, as discussed later in this preamble; we will take action on all of the remaining issues raised by the Petitioners for reconsideration in future notices.

B. What is the statutory authority for the proposed amendments?

New source performance standards implement CAA section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on newly constructed, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT). CAA section 111 also authorizes EPA to distinguish among classes, types, and sizes within categories of sources when establishing standards.

Section 111(b)(1)(B) of the CAA requires EPA to periodically, but no later than every 8 years, review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

C. What are the current petroleum refinery NSPS that are proposed to be amended?

NSPS for petroleum refineries (40 CFR part 60, subpart J) apply to the affected facilities at the refinery, such as fuel gas combustion devices (which include process heaters and flares), that commence construction, reconstruction, or modification after June 11, 1973. The NSPS were originally promulgated on March 8, 1974, and have been amended several times. In this action, we are granting reconsideration and proposing technical corrections to subpart J for certain issues that were identified by Industry Petitioners.

Additional standards for petroleum refineries (40 CFR part 60, subpart Ja) apply to flares that commence construction, reconstruction, or modification after June 24, 2008, and other affected petroleum refinery sources, including process heaters, that commence construction, reconstruction, or modification after May 14, 2007. In this action, we are proposing amendments to subpart Ja to address the issues raised by Petitioners regarding flares and process heaters. We are also granting reconsideration and proposing technical corrections to subpart Ja for certain issues that were identified by Industry Petitioners.

III. Summary of the Proposed Amendments

The following sections summarize the proposed amendments in both 40 CFR part 60, subpart J and 40 CFR part 60, subpart Ja. Section IV contains the rationale for these amendments, while the amendments themselves follow the preamble.

A. What are the proposed amendments to the existing standards for petroleum refineries in 40 CFR part 60, subpart J?

We are proposing to add a new paragraph to 40 CFR 60.100 to allow 40 CFR part 60, subpart J affected sources the option of complying with subpart J by following the requirements in 40 CFR part 60, subpart Ja. We believe the subpart Ja requirements are at least as stringent as those in subpart J, so providing this option will allow all process units in a refinery to follow the same requirements and simplify compliance. We request comments on this allowance. We are also proposing to correct the value and units (in the metric system) for the allowable incremental rate of PM emissions in 40 CFR 60.106(c)(1). We amended the units for this constant in 40 CFR 60.102(b) on June 24, 2008, and we are now correcting 40 CFR 60.106(c)(1) accordingly.

B. What are the proposed amendments to the new requirements for affected process heaters in 40 CFR part 60, subpart Ja?

We are proposing to create three subcategories of process heaters and to establish performance standards for NO_X emissions within these subcategories for new, modified, and reconstructed process heaters. The subcategories that we are proposing to create are: (1) Natural draft process heaters; (2) forced draft process heaters; and (3) co-fired process heaters. We are also proposing to provide an additional emission limit format for these subcategories, to extend the averaging time over which compliance is determined, and to allow additional options for demonstrating initial and ongoing compliance with the limits. Other aspects of the final rule, such as recordkeeping and reporting requirements, remain the same, and will apply as promulgated to all of these subcategories.

For the natural draft process heater subcategory, the proposed NO_X emission limit for newly constructed, modified, and reconstructed natural draft process heaters is 40 parts per million by volume (ppmv) on a 365-day rolling average basis (dry at 0 percent excess air). For the second subcategory, forced draft process heaters, the proposed NO_X emission limit for newly constructed forced draft process heaters is 40 ppmv on a 365-day rolling average basis (dry at 0 percent excess air). For modified or reconstructed forced draft process heaters, the proposed NO_X

emission limit is 60 ppmv on a 365-day rolling average basis (dry at 0 percent excess air). These limits are based on the performance of ultra-low NO_X burner control technologies.

We are also proposing an alternative compliance option that would allow owners and operators to obtain EPA approval for a site-specific NO_X limit for certain process heaters in both of these subcategories that are modified or reconstructed. In limited cases, existing natural draft or forced draft process heaters have limited firebox size or other constraints such that they cannot apply the BDT of ultra-low NO_X burners or otherwise meet the applicable limit. This proposed compliance option would require a detailed demonstration that the application of the ultra-low NO_X burner technology is not feasible and would require that the refinery conduct source tests to develop a site-specific emission limit for the process heater. This analysis would be subject to review and approval by EPA and this review would not be delegable to a State or local agency.

We are not proposing to amend the methods for determining initial compliance with the emission limits for any of the subcategories, although we are proposing to provide owners and operators of process heaters in any subcategory that are equipped with combustion modification-based technology (low-NO_X burners or ultra-low NO_X burners) with a rated heating capacity of less than 100 million British thermal units per hour (MMBtu/hr) the option of using continuous emission monitoring systems (CEMS) (in the final rule, these process heaters must use biennial source testing to demonstrate compliance). We are also proposing to require that owners and operators with process heaters in any subcategory that are complying using biennial source testing establish a maximum excess oxygen concentration operating limit, and comply with the O_2 monitoring requirements for ongoing compliance demonstration.

We are also proposing to provide an alternative format for the emission limits in terms of pounds per million British thermal units (lb/MMBtu) that are equivalent to the concentration-based limits. For newly constructed forced draft process heaters, and for newly constructed, modified and reconstructed natural draft process heaters, the proposed alternative emission limit is 0.035 lb/MMBtu on a 365-day rolling average basis (dry at 0 percent excess air). For modified or reconstructed forced draft process heaters, the proposed alternative emission limit is 0.055 lb/MMBtu on a 365-day rolling average basis (dry at 0 percent excess air). We propose that initial compliance with the lb/MMBtu emission limit would be demonstrated by conducting a performance evaluation of the CEMS in accordance with Performance Specification 2 in appendix B to 40 CFR part 60, with Method 7 of 40 CFR part 60, appendix A–4 as the Reference Method, along with fuel flow measurements and fuel gas compositional analysis. We propose that the NO_X emission rate would be calculated using the oxygen-based F factor, dry basis according to Method 19 of 40 CFR part 60, appendix A–7. We propose that ongoing compliance with this NO_X emission limit would be determined using a NO_X CEMS, a continuous fuel gas flow monitor, and at least daily sampling of fuel gas heat content or composition, averaged over each 365-day period.

The third subcategory we propose to create is for co-fired process heaters. Certain refineries, such as island refineries, do not have natural gas available and must supplement their fuel gas (co-fire) with oil to meet their energy demands. We propose to create this subcategory and set an emission limit for co-fired process heaters because technology is presently not able to achieve as low a level of NO_X emissions as units that are fired by gas alone. The NO_X emission limit for these units is proposed to be the weighted average based on a limit of 0.08 lb/MMBtu for the gas portion of the firing and 0.27 lb/MMBtu for the oil portion of the firing.

Because data indicates that some of these co-fired units may not be able to achieve the NO_X limitations even with ultra-low NO_X burner control technology, we are also proposing to allow owners and operators an alternative compliance option to obtain EPA approval for a site-specific NO_X limit for these process heaters. The site-specific limits for co-fired units would be based on the same factors used to determine site-specific limits for other types of process heaters. All of the requirements for monitoring, recordkeeping, and reporting for co-fired heaters are the same as for other process heaters.

C. What are the proposed amendments to the requirements for affected flares in 40 CFR part 60, subpart Ja?

We are proposing to amend several of the requirements for flares as follows. First, we are proposing to remove the 250,000 standard cubic feet per day (scfd) 30-day average flow rate limit in 40 CFR 60.102a(g)(3) and the requirement for a diagram of the flare connections in the flare management plan required in 40 CFR 60.103a(a)(1).

Second, we are proposing to require a list of refinery process units and fuel gas systems connected to each affected flare in the flare management plan and to assess and minimize flow to affected flares from these process units and fuel gas systems. We are also proposing to allow additional time for owner and operators of modified flares to develop a flare management plan.

Third, we are proposing to amend the modification provision in 40 CFR 60.100a(c) to exclude certain connections that do not result in emission increases from being modifications. We are not proposing any changes to the definition of ''flare'' in 40 CFR 60.101a.

Fourth, we are proposing to provide additional time for modified flares that need to install additional amine scrubbing and amine stripping columns to meet the 60 ppmv, 365-day hydrogen sulfide (H_2S) concentration limit; however, we are not proposing any changes to the short- or long-term H_2S concentration limits themselves as they apply to flares as contained in 40 CFR 60.102a(g)(1)(ii).

Fifth, we are proposing changes to 40 CFR 60.103a(b) to specify that a root cause analysis for flares would be required for all events causing total sulfur dioxide (SO_2) emissions from that flare to exceed 227 kilograms (kg) (500 lb) in any 24-hour period. In the final rule, root cause analysis was required when the SO_2 emissions exceeded the applicable emission limits by 500 lb/day.

Sixth, we are proposing to add language to the regulation to make it clear that owners and operators must implement corrective actions on the findings of the SO_2 or flow rate root cause analyses and to specify a deadline for performing the analyses. We are also proposing to allow 2 years for a modified flare to begin complying with these requirements if the owner or operator commits to installing a flare gas recovery system.

Seventh, we are proposing changes to the sulfur monitoring requirements in 40 CFR 60.107a(d) (proposed to be redesignated as 40 CFR 60.107a(e)). The final rule required continuous total reduced sulfur monitoring with CEMS. We are proposing two additional monitoring options for measuring SO_2 emissions to determine if a release would trigger a root cause analysis. Both options would specify procedures for determining total sulfur compound concentrations in the fuel gas entering the flare. The two new proposed options include the use of a CEMS to measure

the concentration of total reduced sulfur compounds of H_2S. If H_2S CEMS are used, periodic manual sampling and analysis would be performed to determine a ratio of the concentration of total sulfur compounds to the concentration of H_2S. This value would be used with the H_2S CEMS data to estimate the daily concentrations of total sulfur compounds. We are also proposing that existing flares that are modified and become affected sources have 18 months to install the sulfur monitoring device. Because we are proposing to allow more time for these flares to install monitoring devices, we are also proposing that root cause analysis and corrective action analysis is not required until 18 months after a modified flare becomes an affected source (i.e., until the monitoring device is in place).

Finally, we are proposing changes to the recordkeeping and reporting requirements at 40 CFR 60.108a(c) and (d) when a root cause analysis and corrective action analysis are required and to add recordkeeping requirements for the proposed monitoring option that is based on periodic manual sampling and analysis.

D. What are the proposed amendments to the definitions in 40 CFR part 60, subpart Ja?

In reviewing the final standards, we determined that the definition of ''refinery process unit'' is vague and not used consistently in other definitions. For example, a ''flexicoking unit'' is defined as ''one or more refinery process units,'' but ''fluid catalytic cracking unit'' is defined as ''a refinery process unit.'' We are proposing to clarify that an affected source is one process unit by amending the definitions of ''delayed coking unit,'' ''flexicoking unit,'' and ''fluid coking unit'' to be ''a refinery process unit'' rather than ''one or more refinery process units.'' We are also proposing to amend the definition of ''delayed coking unit'' to clarify that each coking unit includes all of the coke drums and associated fractionators, and we are proposing to amend the definition of ''fluid coking unit'' to clarify that each fluid coking unit includes the coking reactor and the coking burner. We are proposing to add definitions of ''forced draft process heater,'' ''natural draft process heater,'' and ''co-fired process heater'' to define our new subcategories for the process heater emission limits.

We are proposing to add a new definition of ''flare gas recovery system.'' The definition of ''flare gas recovery system'' is needed because we are proposing requirements for systems with flare gas recovery. We are also proposing to amend the definition of ''process upset gas'' to mean ''any gas generated by a petroleum refinery process unit as a result of start-up, shut-down, upset or malfunction.'' This will make the definition the same as the definition of ''process upset gas'' in 40 CFR part 60, subpart J.

Finally, we are proposing to amend the rule to clarify the definitions of ''petroleum refinery'' and ''refinery process unit.'' Facilities that only produce oil shale or tar sands-derived crude oil for further processing using only solvent extraction and/or distillation to recover diluent that is then sent to a petroleum refinery are not themselves petroleum refineries. This is because they are only producing feed to a petroleum refinery as a product and not refined products. Facilities that produce oil shale or tar sands-derived crude oil and then upgrade these materials and produce refined products would be a petroleum refinery. In addition, because petroleum coke is a refinery product and anode grade coke is not, process units that calcine petroleum coke into anode grade coke are not petroleum refinery process units. We are proposing to amend the definitions of ''fuel gas'' and ''refinery process unit'' to clarify that process units that gasify petroleum coke at a petroleum refinery are refinery process units because they are producing refinery fuel gases and possibly other refined intermediates or final products.

IV. Rationale for the Proposed Amendments

A. What is the rationale for the proposed amendments for affected process heaters?

1. Process Heater Emission Limits

The final rule, in 40 CFR 60.102a(g)(2), established NO_X limits for all new, modified, or reconstructed process heaters with a rated heat capacity of greater than 40 MMBtu/hr of 40 ppmv NO_X (dry basis, corrected to 0 percent excess air) on a 24-hour rolling average basis (there were no subcategories). This limit was more stringent than the NO_X limit that was included in the proposed rule. The NO_X limit was based on emissions tests for low-NO_X and ultra-low NO_X burners on various types of process heaters. After promulgation of the final NO_X limit for process heaters, both Industry Petitioners and HOVENSA raised several issues regarding this limit in their petitions for reconsideration. We address these issues below and provide our rationale for the proposed amendments to the NO_X limits for process heaters that are included in this action. For details on the data analysis supporting the proposed amendments for process heaters, see the memorandum ''Evaluation of Nitrogen Oxides Emissions Data for Process Heaters'' in Docket ID No. EPA–HQ–OAR–2007–0011.

Since promulgation of the final rule, Industry Petitioners have provided additional CEMS data indicating that, for certain process heaters, the NO_X emission limit in 40 CFR 60.102a(g)(2) is not achievable by the BDT, ultra-low NO_X burners. Industry Petitioners argued that, due to normal process fluctuations, including process turn downs (operating at as low as half of the rated capacity) and variations in the heat content of the fuel gas, the 40 ppmv NO_X emissions limit is not achievable on a 24-hour average basis; thus, a longer averaging time or a higher limit is needed. In addition, we reviewed the data that we used to establish the emissions limits in the final rule and noted that the data were from short-term source tests and, as such, were not generally indicative of the range of operating conditions that might occur over the course of a year. We concluded that all of these data demonstrate that the final NO_X limit is not always achievable on a 24-hour basis.

We also find that this is a reasonable conclusion because during process turn downs, especially those approaching 50 percent of capacity, which can occur routinely, less fuel gas is combusted without an equivalent reduction in the flow of combustion air. Turn downs, therefore, result in less efficient combustion, which tends to increase NO_X concentrations in the heater exhaust. Even though the concentration of NO_X increases during turn downs, the mass of NO_X emitted does not because there is less exhaust gas produced. Turn downs typically occur in hydrotreater or hydrogen units that have varying operational rates. Some process heaters may be in turn down for months (e.g., when a hydrotreater is using a new catalyst). As Industry Petitioners point out, one way to allow for the variations in emissions that are due to process fluctuations, turn downs, and variations in fuel gas composition is to extend the averaging time over which compliance is determined. Based on the above information, we are proposing changes to the NO_X limit to address these issues.

In the final rule, we considered all process heaters in one category. Section 111(b)(2) of the CAA allows us to ''distinguish among classes, types, and sizes within categories'' of affected sources when establishing performance standards. Based on data received after

promulgation, we are now proposing to treat natural draft process heaters and forced draft process heaters as two separate subcategories.

Our review of the CEMS data received from Industry Petitioners after promulgation of the final rule indicates that nearly all new, modified, or reconstructed natural draft heaters using ultra-low NO_X burners can achieve NO_X concentrations of less than 40 ppmv on a 365-day rolling average basis (dry at 0 percent excess air). We anticipate that the natural draft process heaters not meeting a 40 ppmv emissions limit on a 365-day rolling average basis have a higher hydrogen content and are currently meeting the proposed 0.035 lb/MMBtu limit (see Section IV.A.2 of this preamble). We found in the additional performance data available for ultra-low NO_X burner retrofits provided by Industry Petitioners during reconsideration that the exhaust gas NO_X concentrations from forced draft process heaters exceeded 40 ppmv on an annual average basis. Industry Petitioners suggest that this is because retrofitting the fireboxes of forced draft process heaters often results in excess oxygen levels and higher flame temperatures that would result in higher NO_X emissions. Moreover, forced draft process heaters often include heat exchangers that provide combustion air preheating, which reduces fuel usage by up to 10 percent but increases the amount of NO_X generated. It would be possible to provide less combustion air preheat, which would lower the inlet combustion air temperatures and NO_X concentrations, but that would come with a reduction in the energy savings from the combustion air preheater. To recognize the difference in these types of process heaters and their performance, and to avoid creating disincentives for energy savings, we propose to subcategorize according to these two types of process heaters and establish separate limits for existing forced draft process heaters that are modified or reconstructed. For new, modified, or reconstructed natural draft process heaters, we are proposing a 40 ppmv emissions limit on a 365-day rolling average basis (dry at 0 percent excess air). For forced draft process heaters, we are proposing limits of 40 ppmv for newly constructed process heaters and 60 ppmv for modified or reconstructed process heaters, both on a 365-day rolling average basis (dry at 0 percent excess air). For modified and reconstructed forced draft process heaters, we believe that the 60 ppmv limit constitutes BDT both because of the achievability of the standard and because of the energy penalty noted above that may occur were the units required to meet the 40 ppmv limit.

The annual average format provides one means of dealing with process and control system variability. We also considered shorter averaging times, but these would require higher concentration limits and special provisions to deal with turn down situations. California's South Coast Air Quality Management District (SCAQMD) Rule 1109 effectively establishes a mass NO_X emissions rate limit for the process heater when operated at maximum capacity and allows the owner or operator of the process heater to meet this mass emissions rate when the unit is not operating at maximum capacity. We request comment on the advantages and disadvantages of providing an extended averaging time versus providing specific provisions to account for higher NO_X concentrations observed during process heater turn downs where the process heater is running at about 50 percent or less of capacity.

We also received information from Industry Petitioners that a particular type of forced draft process heater, one that is also equipped with a combustion air preheater, may not consistently meet the proposed emissions limit for newly constructed forced draft process heaters of 40 ppmv (0.035 lb/MMBtu). We do not want to discourage this type of system because of the potential fuel savings, but we do not have data supporting Industry Petitioners' assertion. We are, therefore, requesting comment and supporting data on the need to establish a subcategory for this type of new forced draft process heater, and to establish a higher NO_X limit for this particular type of new forced draft process heater.

2. Alternative lb/MMBtu Format

Industry Petitioners suggested that we provide an alternative lb/MMBtu emission limit format to address potential issues related to the combustion of high-hydrogen fuel gases. In evaluating this request, we looked at the differences in combusting high-hydrogen fuel gases versus more typical low hydrogen, hydrocarbon-based fuel gases.

Combustion of a wide range of fuel gases in a given process heater produces approximately the same quantity of NO_X. Fuel gases contain varying amounts of hydrogen, and in certain cases, such as hydrotreaters, hydrogen is a significant portion of the fuel gas. Combustion of hydrocarbon fuel gases, such as methane, produce carbon dioxide, which adds to the volume of the gas stream. Combustion of hydrogen fuel gases produces water vapor, which also increases the gas stream on an actual basis. Since our emission limit is on a dry basis, however, this water vapor is discounted and the exhaust gases from combustion of high-hydrogen fuel gases are more concentrated than they are with low-hydrogen fuel gases. This means that if there is only a concentration-based emission limit, high-hydrogen fuel gases would be subject to more stringent emission limits than more typical hydrocarbon fuel gases.

For a range of hydrogen contents in the fuel gas, the 0.035 lb/MMBtu NO_X emissions limit in the final rule would convert to a range of NO_X concentrations on a dry basis of from 32 to 50 ppmv. This means our emission limit of 40 ppmv, which is the midpoint of this range of hydrogen concentrations, equates to a 0.035 lb/MMBtu limit. This value was suggested by Industry Petitioners and is also used in other rules and recent consent decrees between many petroleum refiners and the United States government (representing EPA and various individual States, depending on the petroleum refining company). The consent decrees are in effect on over 90% of domestic refining capacity. These negotiated requirements often set controls in place that have provided the basis (including performance test data and ongoing monitoring data) for our BDT performance levels for process heaters. Similarly, the 0.055 lb/MMBtu NO_X emission limit reasonably equates to a 60 ppmv NO_X concentration limit. We request comments on the use of these lb/MMBtu limits and if these values are reasonably equivalent to the corresponding concentration limits.

3. Co-Fired Process Heaters

In their petition, HOVENSA raised the issue of NO_X limits for co-fired units. Certain refineries, such as island refineries, do not have natural gas available and must supplement their fuel gas with oil to meet their energy demands. In addition, in times of limited natural gas supplies, industry can undergo gas curtailments. While refiners may have separate burners for oil in this situation, they may also be set up to co-fire oil. Technology for these co-fired systems are presently not able to achieve as low a level of NO_X emissions as systems that are fired by gas alone. We received vendor-guaranteed performance levels for several ultra-low NO_X burner suppliers for co-fired units. These data indicate a range of NO_X emissions from 0.080 to

0.19 lb/MMBtu for gas firing and 0.27 to 0.63 lb/MMBtu for oil firing.

After considering all these data, we are proposing the lowest available NO_X performance limit of the different ultra-low NO_X burner designs as the emissions limit for co-fired process heaters. When fired with gas, we are proposing that these burners achieve a NO_X limit of 0.08 lb/MMBtu and when fired with oil, a NO_X limit of 0.27 lb/MMBtu. When the unit is co-fired, we are proposing a weighted average emissions limit for these units based on a limit of 0.08 lb/MMBtu for the gas portion of the firing and 0.27 lb/MMBtu for the oil portion of the firing.

In addition, we are also proposing an alternative performance standard of 150 ppmv for these units when they are being co-fired. This value represents the performance of these process heaters using a mid-range mixture of gas and oil as fuel. We are proposing this concentration-based alternative standard because it provides a simple direct means of measuring compliance (no need to measure oil and gas fuel flows or BTU contents of the fuels).

We request comment on the unique issues related to process heaters on island refineries and situations such as natural gas curtailments that would lead non-island refineries to have burners that are designed to co-fire both oil and fuel gas. We also request comments on limitations that would keep these refiners from installing the best-performing burners and, for process heater/burner combinations that are available that limit NO_X emissions, what NO_X limits would be achievable. Finally, we request comments on the alternative concentration limit and on other methods that may be available to determine compliance with the co-fired process heater NO_X limits.

4. Site-Specific Emission Limits

We are also proposing an alternative compliance option for owners and operators to obtain EPA approval for a site-specific NO_X limit for: (1) Modified or reconstructed natural draft and forced draft process heaters that have limited firebox size or other limitations and therefore cannot apply the BDT of ultra-low NO_X burners and (2) co-fired process heaters. This approach has been used in the past to determine performance levels for boilers (see 40 CFR 60.44b(f)) and would allow for limits that are tailored to the specific process heater.

Certain natural draft and forced draft process heaters, generally ones that are more than 30 years old, have smaller fireboxes than more recent heaters. For these heaters, it is physically impossible to install ultra-low NO_X burners because these burners minimize NO_X emissions through the use of long flame fronts. For these or other process heaters that cannot install ultra-low NO_X burners, owners or operators can elect to submit to the Administrator for approval a site-specific NO_X emission limit. This request must include: (1) The reasons why ultra-low NO_X burners or other means cannot be used to meet the emission limits; (2) test data that reflects performance of technologies that will otherwise minimize NO_X emissions; and (3) the means by which they will document continuous compliance.

We request comments on possible ways of retrofitting ultra-low NO_X burners in space-limited situations, such as raising the firebox height to accommodate flame length, which would enable modified or reconstructed natural draft and forced draft process heaters to install this control technology in space-limited situations.

In addition, because of the high level of uncertainty and site-specific nature of the specification of NO_X limits for co-fired process heaters, we are also proposing an alternative compliance option for owners and operators of co-fired process heaters to obtain EPA approval for a site-specific NO_X limit. The request to the Administrator must follow the same requirements as described above for natural draft and forced draft process heaters.

Finally, we request comments on all aspects of the use of site-specific testing to establish EPA-approved limits for size-limited natural draft and forced draft process heaters and for co-fired process heaters.

B. What is the rationale for the proposed amendments for affected flares?

1. Soliciting Comment on the Flare Requirements in the Final Rule

All of the Petitioners noted that many of the flare provisions in the final rule were not in the May 14, 2007, proposal (72 FR 27178) and that there was no opportunity for notice and comment. Therefore, we now solicit comments on all aspects of the final rule flare provisions on which the public has not previously had an opportunity to comment and that we do not propose to change in this action. In addition, the following sections describe and give our rationale for proposed changes to these final provisions.

We also note that we have prepared revised cost and emissions reduction impact estimates for the flare requirements that we are proposing in this notice. Based on information provided by Industry and Environmental Petitioners, we now believe that there will be more existing flares that will become affected facilities in the first 5 years of this rule and that there are more sulfur emissions from events that would cause root cause analysis than we anticipated. This leads both the costs and the emission reductions anticipated in the final rule to increase. The proposed amendments would remove some requirements in the final rule while strengthening others. Overall, we believe that the revised impacts represent the rule as it would be amended by today's action. The revised impacts for proposed amendments to the flare requirements are presented in Section V of this preamble; for details on the revised impacts estimates for flares, see Docket ID No. EPA–HQ–OAR–2007–0011.

The following sections outline the major areas for which Petitioners have sought reconsideration. They provide overview of the Petitioners' concerns and propose our response.

2. Definition of ''Flare''

Industry Petitioners and HOVENSA both requested that we change the definition of flare so that it includes only the seal pot and flare itself and not the flare header and associated equipment that provides the flare gas from the process units or fuel gas system to the flare burner assembly. Industry Petitioners suggested that we revise the definition of the flare and thus the flare affected source in order to limit applicability of the flare provisions. By limiting the definition of flare to only the downstream components, they suggested that any connection made upstream of the seal pots would not be considered a modification. We disagree with this outcome because we are not trying to limit the affected facility and what would be a modification. Including the flare header system is crucial to our approach in that the connections that trigger a modification are almost always made prior to the seal pot. Accordingly, adopting a narrower definition may result in many of the activities that increase emissions at the flare being excluded from review. We are, therefore, retaining the definition of flare as promulgated in the final rule and includes the upstream components of the flare header as well as the actual flare itself. We are requesting comments on all aspects of the flare definition, including Industry Petitioners' suggested revisions to the definition.

A related concern Industry Petitioners raised regarding the flare definition we have included in 40 CFR part 60, subpart Ja is the impact of cross-referencing it in 40 CFR part 60, subpart

J. Specifically, Industry Petitioners assert that we expanded the applicability of subpart J and created retroactive noncompliance issues for certain existing flares when we cross-referenced the flare definition in 40 CFR 60.100(b). Industry Petitioners, however, misinterpret the intent and impact of this cross-reference. The intent of the provision was not to expand the definition of fuel gas combustion device under subpart J; rather, it was included only to clarify that flares were not subject to the new flare requirements in subpart Ja until after the date of publication of the final rule.

In the final rule we stated that a ''fuel gas combustion device under paragraph (a) of this section,'' that is also a ''flare as defined in § 60.101a,'' is still subject to the requirements in 40 CFR part 60, subpart J, not 40 CFR part 60, subpart Ja, if it ''commences construction, reconstruction, or modification after June 11, 1973, and on or before June 24, 2008.'' In other words, the provision only changes the applicability date for flares that have always fallen within the definition of fuel gas combustion device in subpart J, i.e., it does not impact applicability.

We recognize that there may be disagreement regarding coverage of flares. Specifically, we recognize that there may be disagreement under 40 CFR part 60, subpart J regarding what parts of a flare are covered as fuel gas combustion devices. That disagreement is, however, not being addressed by this rulemaking, nor was it addressed in the rulemaking published on June 24, 2008. Rather, such disagreements should be addressed through other available CAA regulatory mechanisms, such as through Applicability Determinations under 40 CFR 60.5.

3. Flare Modification Provision

Each petition we received requested that we reconsider the modification provision in 40 CFR 60.100a(c) which states that ''a modification to a flare occurs if: (1) Any new piping from a refinery process unit or fuel gas system is physically connected to the flare (e.g., for direct emergency relief or some form of continuous or intermittent venting); or (2) a flare is physically altered to increase flow capacity of the flare.''

In developing this provision, we anticipated that all new connections to the flare would result in an increase in emissions from the flare, and thus qualify as a modification to the flare under the statutory definition. While we have historically identified emission increasing activities based on a numerical calculation, see 40 CFR 60.14(a) and (b), we believe that given the intermittent nature of flare use, the variable composition of gas being flared, and other factors, the listing approach we are proposing to adopt here will help ease implementation issues while identifying ''any physical change in, or change in the method of operation of [an affected facility] which increases the amount of any air pollutant emitted.'' CAA section 111(a)(4). Thus, new connections of refinery process units to the flare would trigger 40 CFR part 60, subpart Ja applicability for the flare.

Industry Petitioners subsequently submitted data asserting that many new connections made to the flare do not result in an increase in emissions from the flare and, in fact, may decrease the emissions from the flare. For example, they asserted that installing a flare gas recovery system requires making several new connections to the flare, but these connections do not increase the emissions from the flare, so they should not qualify as a modification under CAA section 111(a)(4) and should not trigger 40 CFR part 60, subpart Ja applicability for the flare.

We have evaluated a number of potential flare connection scenarios and identified the types of connections that do not result in an increase in emissions from the flare. Based on our evaluation, we are proposing amendments to the modification provision in 40 CFR 60.100a(c) that would clarify what constitutes a modification of the flare and would exclude these types of connections because they will not result in an emissions increase as required by the definition of modification. See CAA section 111(a)(4) (''modification means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.''). Specifically, we are proposing to exclude the following types of connections: (1) Those associated with the installation of a flare gas recovery system; (2) connections required to install a monitoring device on the flare (e.g., flow meter, sulfur monitor, or pressure transducer); and (3) connections used to replace or upgrade old piping or pressure relief systems that are already connected to that flare. We also request comment, including supporting documentation, on whether there are other types of connections that do not result in an increase in emissions from a flare.

Industry Petitioners have also suggested that some *de minimis* emissions increases should be allowed without triggering NSPS subpart Ja applicability. Such exceptions are permissible but not required under the modification provisions of CAA section 111—see *Alabama Power* vs. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1980). We request comments on a *de minimis* approach and on specific changes that may occur to flares that will result in *de minimis* increases in emissions. We also request comments on the type, number, and amount of emissions that would be considered *de minimis*.

Finally, Industry Petitioners requested that we consider the merits of a two-tiered system for existing facilities to become affected facilities through modifications. They suggest that the existing definition of modification may be appropriate for triggering the flare gas minimization requirements under 40 CFR 60.103a work practice standards, but that we should consider a separate, more substantive, trigger for requirements for fuel gas combustion devices under 40 CFR 60.103a(g)(1). We do not see the need for this type of system, especially considering all the proposed changes included in this notice. For example, we are proposing several changes to the flare provisions that would reduce the number of changes that would make an existing source an affected facility and reduce the scope of the requirements, including, but not limited to, excluding some connections from the definition of modification, including startup and shutdown fuel gases as process upset gases which are exempt from the fuel gas standards, providing additional time to comply when new fuel gas sulfur removal equipment is needed, and removing the flow limits. Moreover, we are concerned that their approach would not be consistent with the broad statutory definition of modification and the requirement that new sources, including modified sources, comply with the NSPS. We see no basis in these statutory provisions to provide that different types of modifications trigger fundamentally different NSPS requirements. We are nonetheless requesting comments on this approach and the statutory basis for this adoption.

4. Application of Fuel Gas Combustion Device Sulfur Limits to Flares

a. *''Process upset gas'' definition.* We are proposing to include flaring events from startups and shutdowns in the definition of ''process upset gas.'' The final 40 CFR part 60, subpart Ja definition excludes startups and shutdowns from the definition of process upset gases. Process upset gases are exempt under 40 CFR 60.103a(h) from meeting the sulfur standards (H_2S or SO_2) for fuel gas combustion devices

in 40 CFR 60.103a(g)(1). Our basis for excluding these events in the final rule was that, in conjunction with our flow limit, BDT was the capture and treatment of these gases. Certain refiners were able to nearly or completely eliminate flaring, including startup and shutdown events that normally released gases to the flare. Since promulgation of the final rule, we have learned from Industry Petitioners that many refiners must release gases to their flares during startup and shutdown events. During startup and shutdown of a process unit, refiners will purge the process unit with nitrogen gas to ensure that hydrocarbons are completely removed from the system. In most cases, the gas is flared because it is a large quantity of gas over a short period of time, and the high concentration of nitrogen will disrupt the combustion and NO_X control in the refinery process heaters and boilers. These gases cannot typically meet the SO_2 or H_2S standards for fuel gas combustion devices. The BDT analysis is based on removing H_2S from continuous or regular intermittent streams and does not include controlling sulfur in potentially large, infrequent fuel gas flows that we now understand are necessary in some cases. We believe that SO_2 emissions from these events can be minimized or prevented by addressing them with a flare management plan.

b. *Long-term H_2S* concentration limit. Industry Petitioners also expressed concern that meeting the H_2S limit of 60 ppmv on a 365-day rolling average basis (long-term sulfur limit) will be difficult for affected flares because of the cost of treatment and the method of complying with the long-term average. These Petitioners have indicated that for typically intermittent flaring events, compliance with an annual average limit is difficult because sulfur content may be variable and less likely to be normalized over a limited number of data points. We believe that we have adequately addressed the issue by proposing to exclude process upset gases, which would include gases from startups and shutdowns from this long-term sulfur limit, and we are not proposing any changes to this long-term limit.

Industry Petitioners suggest that the flare management plan and root cause analysis would be an effective means of limiting SO_2 emissions from flares without the long-term limit. We are not proposing changes to the long-term limit itself, but we are requesting comment on whether the rule should require the long-term sulfur limit for all flares or whether, to address the Industry Petitioners' concern, it should limit applicability of the long-term sulfur limit only to flares that operate a minimum number of hours per year.

We are proposing to provide additional time for modified flares to meet the sulfur limits in cases where the treatment system does not already have sufficient amine treatment capacity to remove the H_2S. Many of the connections that would trigger applicability to 40 CFR part 60, subpart Ja are critical to the safe and efficient operation of the refinery. These connections can and often must be installed quickly, in much less time than it takes to install sulfur removal equipment. For these reasons, we are proposing that refineries that must install additional sulfur removal equipment have 2 years after startup of the modified flare to install the sulfur removal and recovery equipment to comply with the standards.

We expect this additional time will only be necessary in limited circumstances due to the consent decrees and refinery operating practices and we expect most of the existing flares would already have sufficient sulfur removal equipment to treat additional fuel gas streams. However, for those that do not, it is necessary for these systems to have additional time. Due to the planning, design, purchasing, and installation required to expand fuel gas treatment systems, we are proposing to provide 2 years after startup of a modified flare to comply with the long-term sulfur limit for those facilities that certify that they need to install additional sulfur removal equipment, such as amine towers or sulfur recovery plants.

We request comments on phasing out this time allowance for the installation of fuel gas treatment systems. We note that a substantial portion of the petroleum refineries in the United States are under consent decrees with fuel gas sulfur requirements similar to the requirements of subpart Ja as proposed to be amended. In this action, we are proposing to clarify what constitutes modification of a flare, and refiners are now aware that modification of the flare may happen quickly and that they will be subject to the long-term sulfur limits. Therefore, we expect that refiners would (or are required to under the consent decrees) be able to install sufficient sulfur removal equipment over the next several years to comply with the long-term sulfur limit upon modification. We request comment on whether 5 years is sufficient time for all flares potentially subject to subpart Ja to have sulfur removal equipment in place and, therefore, not need this added time for installation of equipment.

5. Flare Flow Rate Limit

Both Environmental and Industry Petitioners questioned the 250,000 scfd flow rate limit for flares. Environmental Petitioners supported the provisions in the May 14, 2007, proposed rule eliminating routine flaring from affected fuel gas producing units (72 FR 27178), and they were concerned that EPA issued standards would allow any routine amount of flaring. Industry Petitioners, on the other hand, suggested that specific flow limits are not warranted.

In response to these petitions, we have reconsidered the final rule. First, we considered reinstating the requirement for no routine flaring as requested by Environmental Petitioners. This action would have also required returning to the concept of applicability of the no routine flaring requirement to fuel gas producing units. Under the 2007 proposed rule, only the gas stream from the modified fuel gas producing unit was barred from routine flaring. Under the final rule, all of the units connected to the flare were addressed. We concluded that this was a preferable approach because it allowed us to consider how the flare should be managed for all gases flared. We also concluded that no routine flaring was not feasible in many cases where gases routed to flares could not be effectively captured, stored, and returned to the process or recovered as fuel.

We then considered the flow limit of 250,000 scfd in the final rule. In developing the final rule, we believed that sweep gas flow needed to maintain the readiness of the flare would be only about 20 percent of the final flow limit. Based on the industry design data, it appears likely that there are some flares that require significantly higher sweep gas rates than we originally considered, and some sweep gas rates may be as high as the 250,000 flow limit itself. For these cases, the flow rate limit would be unachievable. Moreover, we considered the effect that having a flow limit might create a perverse incentive to increase the number of flares at a facility to spread the flow out and avoid triggering the flow limit for individual flares. Industry Petitioners suggested that there is a wide variety of configurations and situations and a one-size-fits-all solution of a flare flow limit is not appropriate. They believe that the flare management plan will provide site-specific flexibility to minimize flaring. We are proposing to strengthen both the flare management plan and the root cause analysis provisions, and with those changes, we believe that the 250,000 scfd flow limit is not necessary. Therefore, we are

proposing to remove the 250,000 scfd flow rate limit in the final rule. We request comments on the sufficiency of the proposed flare management plan to address continuous flows to flares, suggestions for other approaches to limit the volume of gas flared, and an alternative higher flow rate limit that could be appropriate.

6. Total Reduced Sulfur and Flow Monitoring Requirements for Flares

We are not proposing to remove the requirements to monitor the flare flow and sulfur content from the final 40 CFR part 60, subpart Ja standards. We continue to believe that monitoring is the key to understanding and minimizing emissions from these diverse and highly variable flare gas systems. We are proposing clarifications and additional options for measuring the sulfur content of flare gases. We are proposing to allow monitoring of H_2S or total sulfur at the flare as additional options for quantifying SO_2 emissions. In the case of H_2S monitoring for flares, we are proposing that owners and operators must supplement the measured readings with additional data to capture non-H_2S sulfur compounds that produce SO_2 emissions. For flare flow monitoring, we are requesting comments on exemptions from flow monitoring for certain cases where monitoring may be unnecessary. We are proposing to add requirements to keep records of the CEMS data, the sampling and analysis data that provide the underlying concentration information needed to calculate the daily SO_2 emissions, and the daily flare flow rate. Finally, we are proposing to allow the owner or operator of an existing flare that becomes a modified source 18 months from the date the flare becomes a modified source to install sulfur and flow monitoring devices. The final rule allowed 1 year, but Industry Petitioners indicated that since more flares are expected to become modified sources than we originally anticipated, additional time should be allowed to ensure that vendors have sufficient time to provide monitoring devices to all modified sources.

Industry Petitioners suggested that we exempt certain flares from the requirement to install continuous flow monitors. Examples they cited include flares that have flare gas recovery systems or other flares that do not routinely have any flow, such as emergency release-only flares, flares on pressure storage vessels, and flares that receive flow only during periods of startup or shutdown. We are not aware of any alternative approaches for such flares that would be effective at determining the need for a root cause analysis and are not proposing such a requirement. Moreover, the costs for flow monitors are reasonable and they provide a direct measure of emissions from the flare. We request comments on the need to provide exemptions from flow monitoring. Commenters should provide specific cases where they believe that monitoring is not necessary and how compliance with the root cause analysis and corrective action provisions would be maintained.

Installation of flare gas recovery systems requires significant planning, design, installation, and testing time, whereas some of the connections that trigger applicability, as discussed previously, can and must be accomplished very quickly. We believe it is important to not create disincentives to the addition of flare gas recovery systems. Therefore, for a modified flare that is being retrofitted with a flare gas recovery system, we are proposing to provide 2 years from the date that the flare becomes an affected facility to comply with the flare management plan, the sulfur and flow monitoring requirements, and the SO_2 and flow root cause analysis and corrective action analysis requirements.

7. Other Proposed Amendments and Requests for Comments

a. *Root cause analysis.* We are proposing to clarify and revise the requirements of 40 CFR 60.103a(b) for root cause analysis. For all sulfur recovery plants and all fuel gas combustion devices except flares, we are clarifying that a root cause analysis is required when SO_2 emissions exceed the applicable emissions limit by at least 500 lb in any 24-hour period. The final rule included the same requirement. We are proposing to amend the rule so that root cause analysis is required for flares for any 24-hour period in which 500 lb or more of total SO_2 is emitted (not SO_2 beyond the applicable emissions limit and not limited to a single event). We are proposing this amendment because flares receive numerous streams that tend to be variable in both composition and flow and are discharged intermittently so that the flow into a flare header at any given time may not be easily associated with one single event or even one single process unit operation. Therefore, we are basing the requirement on a mass per unit time basis rather than on an event by event basis. Further, since we are proposing to eliminate the flow rate limit, there is no applicable mass limit beyond which an exceedance would be calculated.

We are also proposing to require a corrective action analysis and corrective actions for both an SO_2 and flow rate root cause analysis (at 40 CFR 60.103a(b) and (a)(5), respectively). We believe that an important part of conducting a root cause analysis is ensuring that the root cause of the release is addressed and that a reasonable attempt is made at preventing a similar occurrence from causing a future release.

We are proposing to clarify that an owner or operator should begin the root cause analysis and corrective action analysis as soon as possible after a discharge. No later than 45 days after the discharge, the owner or operator must record detailed information about the discharge, including the results of the root cause analysis and corrective action analysis, and either implement corrective action, develop an implementation schedule for corrective action that cannot be completed in the 45 days following the discharge, or explain the basis for the conclusion that corrective action should not be conducted.

Finally, we are proposing to clarify that root cause analysis and corrective action analysis are not required for a modified flare until the compliance date for installation of the sulfur and flow monitoring devices. As described earlier in this preamble, we propose to allow a modified flare 18 months to install monitoring devices or 2 years if the owner or operator commits to installing a flare gas recovery system.

We are not changing the final rule inclusion of startup or shutdown events from the root cause analysis requirements for SO_2. In cases where exceedances are related to a startup or shutdown, the root cause analysis would identify these events as causes, and the corrective action analysis would address potential mitigation options.

b. *Flare management plan.* We are proposing two amendments to the flare management plan requirements other than the flow rate root cause analysis and corrective action analysis. First, we are proposing to extend the time provided to develop the flare management plan for modified flares. The final rule provided 1 year, which was the same amount of time provided for installation of sulfur and flow monitors. Because the flare management plan includes a requirement to describe methods for monitoring flow rate to the flare, we are proposing that the owner or operator of a modified flare must develop and implement the flare management plan on the same timeline as the installation of the flow monitor. Specifically, the owner or operator of a

modified flare must develop and implement the flare management plan no later than 18 months after the flare becomes an affected facility, unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the owner or operator of a modified flare must develop and implement the flare management plan no later than 2 years after the flare becomes an affected flare.

Second, Industry Petitioners noted that a diagram illustrating all connections to the flare would be very complicated and difficult to keep current. Therefore, we are proposing to require a list of refinery process units and fuel gas systems connected to each affected flare in the flare management plan and an assessment of whether discharges to affected flares from these process units and fuel gas systems can be minimized. This requirement is consistent with the intent in the final rule to track which refinery process units and fuel gas systems are connected to each flare and when a new connection is made, but it should be less burdensome than the requirement in the final rule.

c. Compliance with State or local rules as deemed compliance with subpart Ja. We note that there are several State and local air pollution control authorities that have requirements in place to address flare gas flow and SO_2 emissions from refinery flares. For example, SCAQMD has standards for flares (Rule 1118) that include many requirements that are similar to the flare standards as amended by this action in 40 CFR part 60, subpart Ja. Industry Petitioners requested that we recognize this potential for overlap with these existing provisions and that we consider allowing flares subject to both this rule and SCAQMD Rule 1118 to use compliance with Rule 1118 as compliance with the flaring provisions in subpart Ja. We request comment on the equivalency of the subpart Ja requirements as proposed to be amended today and the SCAQMD Rule 1118. We also request comment on whether EPA could deem a facility in compliance with subpart Ja as proposed to be amended today if that facility was found to be in compliance with SCAQMD Rule 1118, or other equivalent State or local rules.

d. New source trigger date for flares. In the final rule, we provided that the subpart Ja requirements for flares would apply only to flares commencing construction, reconstruction, or modification after June 24, 2008, the date of the final rule. We recognized that this was a departure from the normal course, where an affected facility must comply with the final standard if it commences construction, reconstruction or modification after the proposal date, but justified this departure because ''we are promulgating a newly defined affected facility, adding a new provision specifically defining what constitutes a modification of a flare, adding several new requirements, and adding a definition of a flare. All of these changes significantly alter what would be an affected facility and the obligations of the affected facility for purposes of reducing flaring.'' 73 FR at 35856. We believe this decision is justified under the definition of ''new source,'' CAA section 111(a)(2), because the changes meant that numerous flares that were modified according to the final rule were not covered by the proposed rule and thus the proposal was not a standard ''which will be applicable to such source[s].'' Reconsideration has not been sought on this decision and we are not reopening that final action for comment.

In connection with their reconsideration petition, Industry Petitioners have requested that the ''new source'' trigger date for flares be changed to the date of this reconsideration proposal, December 22, 2008. We are concerned that such a change would be improper under the definition of ''new source'' at CAA section 111(a)(2). That provision provides that ''[t]he term 'new source' means any stationary source, the construction * * * of which is commenced after the publication of regulations (or, if earlier, proposed regulation) prescribing a standard of performance under this section which will be applicable to such source.'' As noted above, 40 CFR part 60, subpart Ja's applicability provisions for flares are currently June 24, 2008 (the date of ''publication of regulations * * * prescribing a standard of performance''). While a reconsideration proceeding under CAA section 307(d) constitutes a new rulemaking and acts to cure a procedural flaw in the final rule, we do not interpret it as invalidating or rendering a nullity to the prior rulemaking. This position is supported by the structure of CAA section 307, which provides that the rule remains in effect pending the reconsideration, subject to the authority of the Administrator to stay the effective date. *See* CAA section 307(d)(7)(B) (''Such reconsideration shall not postpone the effectiveness of the rule.''). We also believe this position to be consistent with Congressional intent, as reflected in the definition of ''new source,'' which is tied to the date of proposal, that sources be subject to the final rule if they are on notice that the final rule may apply to them. Nonetheless, we solicit comment on Industry Petitioners' request and, in particular, whether it could be accommodated consistent with the text of CAA section 111(a)(2).

C. What miscellaneous corrections are being proposed?

See Table 1 of this preamble for the miscellaneous technical corrections not previously described in this preamble that we are proposing throughout 40 CFR part 60, subpart Ja.

TABLE 1—PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART J

Section	Proposed technical correction and reason
60.101a	In the definition of ''Sulfur recovery plant,'' replace ''HS_2'' with ''H_2S'' to correct a typographical error.
60.102a(f)(1)(ii)	Replace ''10 ppm by volume of hydrogen sulfide (HS_2)'' with ''10 ppmv of H_2S'' to correct a typographical error.
60.105a(b)	Replace ''paragraphs (b)(1) through (3) of this section'' with ''paragraphs (b)(1) and (2) of this section'' to remove the reference to a nonexistent paragraph.
60.105a(i)(5)	Replace ''Except as provided in paragraph (i)(7) of this section, all rolling 7-day periods'' with ''All rolling 7-day periods'' to remove the reference to a nonexistent paragraph.
60.107a(2)(i)	Replace ''320 ppmv H_2S'' with ''300 ppmv H_2S'' to make the span value for an H_2S monitor consistent with the span value in subpart J.
60.108a(b)	Replace ''the information described in paragraph (e)(6) of this section'' with ''the information described in paragraph (c)(6) of this section'' to correct the reference to a nonexistent paragraph.

V. Summary of Cost, Environmental, Energy, and Economic Impacts

The cost, environmental, and economic impacts presented in this section for flares are revised estimates for the impacts of the final requirements of 40 CFR part 60, subpart Ja as proposed to be amended by this action. The impacts are presented for petroleum refinery flares that commence construction, reconstruction, or modification over the next 5 years. Industry Petitioners noted that we underestimated the number of affected flares in our analysis of the final rule. Based on the clarification of a flare modification, we agree, and we anticipate that there will be 150 affected flares over the next 5 years, or about one flare per refinery, and 80 percent of those will be modified or reconstructed. Environmental Petitioners provided upset data from the Texas Commission on Environmental Quality showing that flares can release much higher quantities of SO_2 emissions than we estimated in our analysis of the final rule, and they stated that our low estimates resulted in underestimated SO_2 emissions reductions for root cause analyses. Based on the data provided, our updated analysis includes three model flare releases with different amounts of SO_2 emissions that are prevented by root cause analysis. The values in Table 2 of this preamble include the costs for those 150 flares to comply with the H_2S emissions limits for fuel gas combustion devices, the flare management plan, sulfur and flow monitoring requirements, and root cause analyses.

For details on the updated impacts estimates for flares, see Docket ID No. EPA–HQ–OAR–2007–0011.

TABLE 2—NATIONAL FIFTH YEAR IMPACTS OF PROPOSED EMISSIONS LIMITS AND WORK PRACTICES FOR FLARING DEVICES SUBJECT TO 40 CFR PART 60, SUBPART J

Requirements	Capital cost ($1,000)	Total annual cost without natural gas offset ($1,000)	Natural gas offset ($1,000)	Total annual cost ($1,000/yr)	Emission reduction (tons SO_2/yr)	Emission reduction (tons NO_X/yr)	Emission reduction (tons VOC/yr)	Overall cost-effectiveness ($/ton)
New Flares	46,000	13,000	(12,000)	410	5,900	4	240	67
Modified and Reconstructed Flares	300,000	81,000	(49,000)	32,000	24,000	17	960	1,300
Total	350,000	94,000	(62,000)	32,000	30,000	21	1,200	1,000

The cost, environmental, and economic impacts for the proposed amendments to 40 CFR part 60, subpart Ja for process heaters are not expected to be significantly different than those reported for the final rule. We expect owners and operators to install the same technology to meet these proposed amendments that we anticipated they would install to meet the final subpart Ja requirements (i.e., ultra-low NO_X burners). Our proposal to create new subcategories of process heaters and set different emissions limits for those subcategories does not impact the control or compliance methods.

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 the Office of Management and Budget (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

This action does not impose any new information collection burden. The information requirements in these proposed amendments would add new compliance options, provide more time to comply with the requirements for fuel gas monitoring systems, and clarify the definition of a ''flare modification.'' These proposed changes will not result in any increase in burden and are expected to reduce the costs associated with testing, monitoring, recording, and reporting. However, the information collection requirements contained in the existing regulation (40 CFR part 60, subpart Ja) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., have been sent to OMB for approval under EPA ICR number 2263.02. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 purposes of assessing the impact of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has no more than 1,500 employees, that is primarily engaged in refining crude petroleum into refined petroleum as defined by NAICS code 32411 (as defined by Small Business Administration size standards); (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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Our analyses indicate that the proposed amendments will not increase the costs associated with the final rule and may decrease costs. Therefore, no adverse economic impacts are expected for any small or large entity. 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 rule 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, or tribal governments or the private sector. It 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 to the private sector in any one year. The costs of the proposed amendments would not increase costs associated with the final rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule 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 amendments contain no requirements that apply to such governments, and impose no obligations upon them.

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. They do not modify existing responsibilities or create new responsibilities among EPA regional offices, States, or local enforcement agencies. 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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed amendments impose no requirements on 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 Risks 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 Executive 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 proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed amendments would not increase the level of energy consumption required for the final rule and may decrease energy requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 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.

This proposed rulemaking involves technical standards. EPA proposes to use the following VCS for determining the higher heating value of fuel fed to process heaters: ASTM D240–02 (Reapproved 2007), ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter''; ASTM D1826–94 (Reapproved 2003), ''Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter''; ASTM D4809–06, ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method)''; ASTM D4891–89 (reapproved 2006), ''Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion''; ASTM D1945–03, ''Standard Method for Analysis of Natural Gas by Gas Chromatography''; and ASTM D1946–90 (reapproved 2006), ''Standard Method for Analysis of Reformed Gas by Gas Chromatography.''

The EPA also proposes to use the following VCS as acceptable alternatives to Methods 2, 2A, 2B, 2C, or 2D for conducting relative accuracy evaluations of fuel gas flow monitors: American Society of Mechanical Engineers (ASME) MFC–3M–1989 (Reaffirmed 1995), ''Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi''; ASME MFC–4M–1986 (Reaffirmed 2008), ''Measurement of Gas Flow by Turbine Meters''; ASME MFC–5M–1986 (Reaffirmed 2006), ''Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters''; ASME MFC–6M–1988 (Reaffirmed 2005), ''Measurement of Fluid Flow in Pipes Using Vortex Flowmeters''; ASME MFC–7M–1987 (Reaffirmed 2006), ''Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles''; and ASME MFC–9M–1988 (Reaffirmed 2006), ''Measurement of Liquid Flow in Closed Conduits by Weighing Method.''

EPA proposes to use the following VCS as acceptable alternatives to EPA Method 15A and 16A for conducting relative accuracy evaluations of monitors for reduced sulfur compounds, total sulfur compounds, and H_2S: ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses.'' The EPA proposes to use the following VCS as acceptable alternatives to EPA Method 16A for analysis of total sulfur samples: ASTM D4468–85 (Reapproved 2006), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry''; and ASTM D5504–08, ''Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence.''

EPA proposes to use the following VCS as acceptable alternatives to Method 18 for relative accuracy evaluations of gas composition analyzers for gas-fired process heaters: ASTM D1945–03, Standard Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946–90 (reapproved 2006), ''Standard Method for Analysis of Reformed Gas by Gas Chromatography''; ASTM D6429–99 (reapproved 2004), ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry''; and ASTM D6420–99

(reapproved 2004), ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS).'' However, ASTM D6420–99 is a suitable alternative to Method 18 only where:

(1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and

(2) The target concentration is between 150 parts per billion by volume and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

These above-listed VCS are incorporated by reference (see § 60.17).

The EPA also proposes to use American Gas Association ''Transmission Measurement Commenter Report No. 7 (Second Revision, April 1996),'' and American Petroleum Institute's ''Manual of Petroleum Measurement Standards, Fifth Edition, August 2005, Chapter 22, Testing Protocol, Section 2, Differential Pressure Flow Measurement Devices,'' for conducting relative accuracy evaluations of fuel gas flow monitors; Gas Processor Association (GPA) Standard 2261–00, ''Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography,'' for relative accuracy evaluations of gas composition analyzers for gas-fired process heaters; and GPA 2172–96, ''Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis,'' for determining the higher heating value of fuel fed to process heaters. These methods are also incorporated by reference (see § 60.17).

While the Agency has identified five VCS as being potentially applicable to this rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. See the docket for this rule for the reasons for these determinations.

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 60.13(i) of the NSPS 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed amendments are either clarifications or compliance alternatives which will neither increase or decrease environmental protection.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporations by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 12, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

2. Section 60.17 is amended by:

a. Revising paragraphs (a)(68) and (a)(84);

b. Adding paragraphs (a)(93) through (a)(99);

c. Adding paragraph (c)(2);

d. Revising paragraph (h)(4) and adding paragraphs (h)(5) through (h)(10);

e. Adding paragraph (m)(2) and (m)(3); and

f. Adding paragraph (o) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(68) ASTM D4468–85 (Reapproved 2006), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for §§ 60.107a(e)(3)(v), 60.335(b)(10)(ii), 60.4415(a)(1)(ii).

* * * * *

(84) ASTM D6420–99 (Reapproved 2004) Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for § 60.107a(d)(4)(ii) of subpart Ja and table 2 of subpart JJJJ of this part.

* * * * *

(93) ASTM D240–02, (Reapproved 2007), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 60.107a(d)(7)(i) of subpart Ja of this part.

(94) ASTM D1826–94 (Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 60.107a(d)(7)(ii) of subpart Ja of this part.

(95) ASTM D4809–06, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 60.107a(d)(7)(iii) of subpart Ja of this part.

(96) ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, IBR approved for § 60.107a(d)(7)(iv) of subpart Ja of this part.

(97) ASTM D5504–08, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 60.107a(e)(3)(v) of subpart Ja of this part.

(98) ASTM D1945–03, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for

§ 60.107a(d)(4)(i) of subpart Ja of this part.

(99) ASTM D1946–90 (Reapproved 2006), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 60.107a(d)(4)(iii) of subpart Ja of this part.

* * * * *

(c) * * *

(2) Manual of Petroleum Measurement Standards, Fifth Edition, Chapter 22—Testing Protocol, Section 2, Differential Pressure Flow Measurement Devices, August 2005, IBR approved for § 60.107a(d)(5)(viii) of subpart Ja of this part.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [part 10, Instruments and Apparatus], IBR approved for § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), (d)(2), (e)(1)(ii), (e)(2)(ii), and (e)(3)(ii) of subpart Ja, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

(5) ASME MFC–3M–1989 (Reaffirmed 1995), Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, IBR approved for § 60.107a(d)(5)(i) of subpart Ja of this part.

(6) ASME MFC–4M–1986 (Reaffirmed 2008), Measurement of Gas Flow by Turbine Meters, IBR approved for § 60.107a(d)(5)(ii) of subpart Ja of this part.

(7) ASME–MFC–5M–1986 (Reaffirmed 2006), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, IBR approved for § 60.107a(d)(5)(iii) of subpart Ja of this part.

(8) ASME MFC–6M–1998 (Reaffirmed 2005), Measurement of Fluid Flow in Pipes Using Vortex Flowmeters, IBR approved for § 60.107a(d)(5)(iv) of subpart Ja of this part.

(9) ASME MFC–7M–1987 (Reaffirmed 2006), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, IBR approved for § 60.107a(d)(5)(v) of subpart Ja of this part.

(10) ASME MFC–9M–1988 (Reaffirmed 2006), Measurement of Liquid Flow in Closed Conduits by Weighing Method, IBR approved for § 60.107a(d)(5)(vi) of subpart Ja of this part.

* * * * *

(m) * * *

(2) Gas Processors Association Standard 2172–96, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, IBR approved for § 60.107a(d)(7)(v) of subpart Ja of this part.

(3) Gas Processors Association Standard 2261–00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, IBR approved for § 60.107a(d)(4)(iv) of subpart Ja of this part.

* * * * *

(o) The following American Gas Association material is available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

(1) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters, Second Revision, April 1996, IBR approved for § 60.107a(d)(5)(vii) of subpart Ja of this part.

(2) [Reserved]

Subpart J—[Amended]

3. Section 60.100 is amended by:

a. Redesignating paragraph (e) as (f); and

b. Adding a new paragraph (e) to read as follows:

§ 60.100 Applicability, designation of affected facility, and reconstruction.

* * * * *

(e) Owners or operators may choose to comply with the applicable provisions of subpart Ja of this part to satisfy the requirements of this subpart for an affected facility.

* * * * *

4. Section 60.106 is amended by revising paragraph (c)(1) to read as follows:

§ 60.106 Test methods and procedures.

* * * * *

(c) * * *

(1) The allowable emission rate (E_s) of PM shall be computed for each run using the following equation:

$$E_s = F + A\ (H/R_c)$$

Where:

E_s = Emission rate of PM allowed, kg/Mg (lb/ton) of coke burn-off in catalyst regenerator.

F = Emission standard, 1.0 kg/Mg (2.0 lb/ton) of coke burn-off in catalyst regenerator.

A = Allowable incremental rate of PM emissions, 43 g/GJ (0.10 lb/million Btu).

H = Heat input rate from solid or liquid fossil fuel, GJ/hr (million Btu/hr).

R_c = Coke burn-off rate, Mg coke/hr (ton coke/hr).

* * * * *

Subpart Ja—[Amended]

5. Section 60.100a is amended by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

§ 60.100a Applicability, designation of affected facility, and reconstruction.

* * * * *

(c) For all affected facilities other than flares, the provisions in § 60.14 regarding modification apply. As provided in § 60.14(f), the special provisions set forth under this subpart shall supersede the provisions in § 60.14 with respect to flares. For the purposes of this subpart, a modification to a flare occurs as provided in paragraphs (c)(1) or (2) of this section.

(1) Any new piping from a refinery process unit or fuel gas system is physically connected to the flare (e.g., for direct emergency relief or some form of continuous or intermittent venting). However, the connections described in paragraphs (c)(1)(i) through (iv) of this section are not considered modifications of a flare.

(i) Connections made to install monitoring systems to the flare.

(ii) Connections made to install a flare gas recovery system.

(iii) Connections made to replace or upgrade existing pressure relief or safety valves, provided the new pressure relief or safety valve has a set point opening pressure no lower and an internal diameter no greater than the existing equipment being replaced or upgraded.

(iv) Replacing piping or moving an existing connection from a refinery process unit to a new location in the same flare, provided the new pipe diameter is less than or equal to the diameter of the pipe/connection being replaced/moved.

* * * * *

6. Section 60.101a is amended by:

a. Adding, in alphabetical order, definitions of ''Air preheat,'' ''Co-fired process heater,'' ''Corrective action,'' ''Corrective action analysis,'' ''Flare gas recovery system,'' ''Forced draft process heater,'' ''Natural draft process heater,'' and ''Root cause analysis''; and

b. Revising the definitions of ''Delayed coking unit,'' ''Flexicoking unit,'' ''Fluid coking unit,'' ''Fuel gas,'' ''Petroleum refinery,'' ''Process upset gas,'' ''Refinery process unit'' and ''Sulfur recovery plant'' to read as follows:

§ 60.101a Definitions.

Air preheat means a device used to heat the air supplied to a process heater generally by use of a heat exchanger to recover the latent heat of exhaust gas from the process heater.

Co-fired process heater means a process heater that employs burners that are designed to be supplied by both gaseous and liquid fuels.

Corrective action means the design, operation, and maintenance changes consistent with good engineering practice to reduce or eliminate the likelihood of recurrence of an event identified by a root cause analysis as having caused a discharge of gases to an affected flare in excess of the flow rate threshold in § 60.103a(a)(4) or the discharge of gases from an affected fuel gas combustion device or sulfur recovery plant in excess of the applicable SO_2 threshold in § 60.103a(b).

Corrective action analysis means a description of all reasonable interim and long-term measures, if any, that are available, and an explanation of why the selected *corrective action* is the best alternative, including any consideration of cost-effectiveness.

Delayed coking unit means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors. A delayed coking unit consists of the coke drums and associated fractionator.

* * * * *

Flare gas recovery system means a system of one or more compressors, piping, and associated water seal, rupture disk, or similar device used to divert gas from the flare and direct the gas to the fuel gas system or to a fuel gas combustion device other than a flare.

Flexicoking unit means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced and then gasified to produce a synthetic fuel gas.

* * * * *

Fluid coking unit means a refinery process unit in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced in a fluidized bed system. The *fluid coking unit* includes the coking reactor, the coking burner, and equipment for controlling air pollutant emissions and for heat recovery on the fluid coking burner exhaust vent.

Forced draft process heater means a process heater in which the combustion air is supplied under positive pressure produced by a fan at any location in the inlet air line prior to the point where the combustion air enters the process heater or air preheat.

* * * * *

Fuel gas means any gas which is generated at a petroleum refinery and which is combusted. *Fuel gas* includes natural gas when natural gas is combusted in any proportion with a gas generated at a refinery. *Fuel gas* does not include gases generated by catalytic cracking unit catalyst regenerators, coke calciners (used to make anode grade coke) and fluid coking burners, but does include gases from flexicoking unit gasifiers and other gasifiers. *Fuel gas* does not include vapors that are collected and combusted to comply with the wastewater provisions in § 40 CFR 61.343 though 61.348, 40 CFR 63.647 or the marine tank vessel loading provisions in 40 CFR 63.652 or 40 CFR 63.651.

Natural draft process heater means any process heater in which the combustion air is supplied under ambient pressure without the use of an inlet air (forced draft) fan. For the purposes of this subpart, a *natural draft process heater* is any process heater that is not a forced draft process heater.

* * * * *

Petroleum refinery means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt (bitumen) or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. A facility that produces only oil shale or tar sands-derived crude oil for further processing at a petroleum refinery using only solvent extraction and/or distillation to recover diluent is not a *petroleum refinery*.

* * * * * *

Process upset gas means any gas generated by a petroleum refinery process unit as a result of start-up, shutdown, upset or malfunction.

* * * * *

Refinery process unit means any segment of the petroleum refinery in which a specific processing operation is conducted, including but not limited to distillation, cracking, coking, reforming, alkylation, isomerization, coke gasification, product loading, sulfur recovery, and wastewater treatment.

Root cause analysis means an assessment to determine the primary cause and any other significant contributing cause(s), as determined through a process of investigation, of discharge of gases to an affected flare in excess of the flow rate threshold in § 60.103a(a)(4) or in excess of the applicable SO_2 threshold in § 60.103a(b)(1), or the discharge of gases from an affected fuel gas combustion device or sulfur recovery plant in excess of the applicable SO_2 thresholds in § 60.103a(b)(2) and (3).

* * * * *

Sulfur recovery plant means all refinery process units which recover sulfur from H_2S and/or SO_2 from a common source of sour gas at a petroleum refinery. The *sulfur recovery plant* also includes sulfur pits used to store the recovered sulfur product, but it does not include secondary sulfur storage vessels downstream of the sulfur pits. For example, a Claus sulfur recovery plant includes: Reactor furnace and waste heat boiler, catalytic reactors, sulfur pits, and, if present, oxidation or reduction control systems, or incinerator, thermal oxidizer, or similar combustion device. Multiple sulfur recovery plants are a single affected facility only when the units share the same source of sour gas. *Sulfur recovery plants* that receive source gas from completely segregated sour gas treatment systems are separate affected facilities.

7. Section 60.102a is amended by:

a. Revising paragraph (a);

b. Revising paragraph (f)(1)(ii);

c. Revising paragraph (g) introductory text;

d. Revising paragraph (g)(1)(ii);

e. Revising paragraph (g)(2);

f. Removing paragraph (g)(3); and

g. Revising paragraph (i) to read as follows:

§ 60.102a Emissions limitations.

(a) Each owner or operator that is subject to the requirements of this subpart shall comply with the emissions limitations in paragraphs (b) through (i) of this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

* * * * *

(f) * * *

(1) * * *

(ii) For a sulfur recovery plant with a reduction control system not followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere in excess of 300 ppmv of reduced sulfur compounds and 10 ppmv of hydrogen sulfide (H_2S), each calculated as ppmv SO_2 (dry basis) at 0 percent excess air; or

* * * * *

(g) Each owner or operator of an affected fuel gas combustion device shall comply with the emission limits in paragraphs (g)(1) and (2) of this section.

(1) * * *

(ii) The owner or operator shall not burn in any fuel gas combustion device any fuel gas that contains H_2S in excess of 162 ppmv determined hourly on a 3-hour rolling average basis and H_2S in excess of 60 ppmv determined daily on a 365 successive calendar day rolling average basis. An owner or operator of a modified flare that needs to install additional amine scrubbing and amine stripping columns to comply with the long-term H_2S limit shall comply with the 60 ppmv 365-day H_2S concentration limit no later than 2 years after that flare becomes an affected facility subject to this subpart.

(2) For each process heater with a rated capacity of greater than 40 million British thermal units per hour (MMBtu/hr) on a higher heating value basis, the owner or operator shall not discharge to the atmosphere any emissions of NO_X in excess of the applicable limits in paragraphs (g)(2)(i) through (g)(2)(iv).

(i) For each newly constructed, modified, or reconstructed natural draft process heater:

(A) 40 ppmv (dry basis, corrected to 0 percent excess air) determined daily on a 365 successive operating day rolling average basis; or

(B) 0.035 pounds per million British thermal units (lb/MMBtu) determined daily on a 365 successive operating day rolling average basis.

(ii) For each new forced draft process heater:

(A) 40 ppmv (dry basis, corrected to 0 percent excess air) determined daily on a 365 successive operating day rolling average basis; or

(B) 0.035 lb/MMBtu determined daily on a 365 successive operating day rolling average basis.

(iii) For each modified or reconstructed forced draft process heater:

(A) 60 ppmv (dry basis, corrected to 0 percent excess air) determined daily on a 365 successive operating day rolling average basis; or

(B) 0.055 lb/MMBtu determined daily on a 365 successive operating day rolling average basis.

(iv) For each co-fired process heater:

(A) 150 ppmv (dry basis, corrected to 0 percent excess air) determined daily on a 365 successive operating day rolling average basis (applicable only when the process heater is being co-fired); or

(B) The daily average emission limit calculated using Equation 3 of this section:

$$E_{NOx,hour} = \frac{0.08 Q_{gas}\ HHV_{gas} + 0.27 Q_{oil}\ HHV_{oil}}{Q_{gas}\ HHV_{gas} + Q_{oil}\ HHV_{oil}} \qquad \text{(Eq. 3)}$$

Where:

$E_{NOx,\ hour}$ = Daily average emission rate of NO_X, lb/MMBtu (higher heating value basis);

Q_{gas} = Daily average volumetric flow rate of fuel gas, scf/hr;

Q_{oil} = Daily average volumetric flow rate of fuel oil, scf/hr;

HHV_{gas} = Daily average higher heating value of gas fired to the process heater, MMBtu/scf; and

HHV_{oil} = Daily average higher heating value of fuel oil fired to the process heater, MMBtu/scf.

* * * * *

(i) For a modified or reconstructed process heater that lacks sufficient space to accommodate combustion modification-based technology, or for a co-fired process heater, the owner or operator may petition the Administrator within 90 days after initial startup of the process heater for approval of a NO_X emissions limit which shall apply specifically to that affected facility. The petition shall include sufficient and appropriate data, as determined by the Administrator, to allow the Administrator to confirm that the process heater is unable to comply with the applicable NO_X emission limit in paragraph (g)(2) of this section. If the petition is approved by the Administrator, a facility-specific NO_X emissions limit will be established at the NO_X emission level achievable when the affected facility is operating in a manner that the Administrator determines to be consistent with minimizing NO_X emissions. At a minimum, the petition shall contain the information described in paragraphs (i)(1) through (4) of this section.

(1) The design and dimensions of the process heater, evaluation of available combustion modification-based technology, description of fuel gas and, if applicable, fuel oil characteristics and combustion conditions, and any other data determined by the Administrator as appropriate.

(2) An explanation of how the data in paragraph (i)(1) demonstrate that ultra-low NO_X burners or other means cannot be used to meet the applicable emission limit in paragraph (g)(2) of this section.

(3) Results of a performance test conducted under representative conditions using the applicable methods specified in § 60.104a(i) to demonstrate the performance of the technology the owner or operator will use to minimize NO_X emissions.

(4) The means by which the owner or operator will document continuous compliance with the site-specific emissions limit.

8. Section 60.103a is amended by:

a. Revising paragraph (a) introductory text and paragraphs (a)(1), (a)(4), (a)(5), and (a)(6);

b. Revising paragraph (b);

c. Redesignating paragraph (c) as paragraph (d); and

d. Adding a new paragraph (c) to read as follows:

§ 60.103a Work practice standards.

(a) Each owner or operator that operates a flare that is subject to this subpart shall develop and implement a written flare management plan. The owner or operator of a newly constructed or reconstructed flare must develop and implement the flare management plan by no later than the date that flare becomes an affected flare subject to this subpart. The owner or operator of a modified flare must develop and implement the flare management plan by no later than 18 months after the flare becomes an affected flare subject to this subpart unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the owner or operator of a modified flare must develop and implement the flare management plan by no later than 2 years after the flare becomes an affected flare subject to this subpart. The plan must include:

(1) A listing of all refinery process units and fuel gas systems connected to the flare for each affected flare and an assessment of whether discharges to affected flares from these process units and fuel gas systems can be minimized;

* * * * *

(4) Procedures to conduct a root cause analysis as soon as possible but no later than 45 days after any discharge to the flare in excess of 14,160 standard cubic meters (m^3) (500,000 standard cubic feet (scf)) in any 24-hour period. The first root cause analysis and corrective action analysis for a modified flare must be conducted no later than the first discharge triggering a root cause

analysis that occurs after the flare has been an affected flare subject to this subpart for 18 months, unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the flow rate root cause analysis for a modified flare must be conducted no later than the first discharge triggering a flow rate root cause analysis that occurs after the flare has been an affected flare subject to this subpart for 2 years;

(5) Procedures to conduct a corrective action analysis and implement corrective actions as soon as possible but no later than 45 days after a discharge exceeding the flow rate threshold in paragraph (a)(4) of this section to minimize the recurrence of similarly caused events based on the finding of the root cause analysis required under paragraph (a)(4) of this section; and

(6) Procedures to reduce flaring in cases of fuel gas imbalance (i.e., excess fuel gas for the refinery's energy needs).

(b) Each owner or operator that operates a fuel gas combustion device or sulfur recovery plant subject to this subpart shall conduct a root cause analysis and a corrective action analysis under each of the conditions specified in paragraphs (b)(1) through (3) of this section and implement corrective actions to minimize the recurrence of a similarly caused event. If a single continuous discharge causes emissions to exceed a level specified in paragraphs (b)(1) through (3) of this section for 2 or more consecutive 24-hour periods, a single root cause analysis may be conducted. For any root cause analysis and corrective action analysis performed, and for any corrective action taken, the owner or operator shall, as soon as possible but no later than 45 days after the discharge, record the identification of the affected facility, the date and duration of the discharge, a description of the root cause of the discharge as identified by the root cause analysis, results of the corrective action analysis, and the corrective action taken as a result of the root cause analysis, as specified in § 60.108a(c)(6).

(1) For a flare, conduct a root cause analysis and a corrective action analysis and take corrective action each time the SO_2 emissions exceed 227 kilograms (kg) (500 pounds (lb)) in any 24-hour period. The first root cause analysis and corrective action analysis for a modified flare must be conducted no later than the first discharge of SO_2 triggering a root cause analysis that occurs after the flare has been an affected flare subject to this subpart for 18 months, unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the root cause analysis for a modified flare must be conducted no later than the first discharge of SO_2 triggering a root cause analysis that occurs after the flare has been an affected flare subject to this subpart for 2 years.

(2) For any fuel gas combustion device other than a flare, conduct a root cause analysis and a corrective action analysis and take corrective action for each exceedance of an applicable short-term emissions limit in § 60.102a(g)(1) if the SO_2 discharge to the atmosphere is 227 kg (500 lb) greater than the amount that would have been emitted if the emissions limits had been met during the period of the exceedance.

(3) For a sulfur recovery plant, conduct a root cause analysis and a corrective action analysis and take corrective action when the daily SO_2 emissions are more than 227 kg (500 lb) greater than the amount that would have been emitted if the SO_2 or reduced sulfur concentration was equal to the applicable emission limit in § 60.102a(f)(1) or (2) for the entire 24-hour period.

(c) When an owner or operator implements corrective action(s) as specified by paragraphs (a)(5) and (b) of this section, the owner or operator shall, no later than 45 days following the discharge, record a description of the action(s) and, if not already completed, a schedule for its (their) implementation, including proposed commencement and completion dates. If an owner or operator concludes that corrective action should not be conducted, the owner or operator shall record and explain the basis for that conclusion no later than 45 days following the discharge.

* * * * *

9. Section 60.104a is amended by:

a. Revising paragraphs (d)(4)(ii), (d)(4)(iii), (d)(4)(v), and (d)(8);

b. Adding paragraph (e)(3); and

c. Revising paragraph (h)(5)(iv) to read as follows:

§ 60.104a Performance tests.

* * * * *

(d) * * *

(4) * * *

(ii) The emissions rate of PM (E_{PM}) is computed for each run using Equation 4 of this section:

$$E = \frac{c_s\, Q_{sd}}{K\, R_c} \qquad \text{(Eq. 4)}$$

Where:

E = Emission rate of PM, g/kg, lb per 1,000 lb (lb/1,000 lb) of coke burn-off;

c_s = Concentration of total PM, grams per dry standard cubic meter (g/dscm), gr/dscf;

Q_{sd} = Volumetric flow rate of effluent gas, dry standard cubic meters per hour, dry standard cubic feet per hour;

R_c = Coke burn-off rate, kilograms per hour (kg/hr), lb per hour (lb/hr) coke; and

K = Conversion factor, 1.0 grams per gram (7,000 grains per lb).

(iii) The coke burn-off rate (R_c) is computed for each run using Equation 5 of this section:

$$R_c = K_1 Q_r\left(\%CO_2 + \%CO\right) + K_2 Q_a - K_3 Q_r\left(\%CO/2 + \%CO_2 + \%O_2\right) + K_3 Q_{oxy}\left(\%O_{oxy}\right) \qquad \text{(Eq. 5)}$$

R_c = Coke burn-off rate, kg/hr (lb/hr);

Q_r = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emissions control or energy recovery system that burns auxiliary fuel, dry standard cubic meters per minute (dscm/min), dry standard cubic feet per minute (dscf/min);

Q_a = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

Q_{oxy} = Volumetric flow rate of O_2 enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%CO = CO concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

$\%O_2$ = O_2 concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

$\%O_{oxy}$ = O_2 concentration in O2 enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis);

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)];

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) [0.1303 (lb-min)/(hr-dscf)]; and

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.00624 (lb-min)/(hr-dscf-%)].

* * * * *

(v) For subsequent calculations of coke burn-off rates or exhaust gas flow rates, the volumetric flow rate of Q_r is calculated using average exhaust gas

concentrations as measured by the monitors required in § 60.105a(b)(2), if applicable, using Equation 6 of this section:

$$Q_r = \frac{79 \times Q_a + \left(100 - \%O_{oxy}\right) \times Q_{oxy}}{100 - \%CO_2 - \%CO - \%O_2} \qquad \text{(Eq. 6)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emission control or energy recovery system that burns auxiliary fuel, dscm/min (dscf/min);

Q_a = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

Q_{oxy} = Volumetric flow rate of O_2 enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%CO = CO concentration FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required in accordance with § 60.105a(g)(3), assume %CO to be zero;

$\%O_2$ = O_2 concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis); and

$\%O_{oxy}$ = O_2 concentration in O_2 enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis).

* * * * *

(8) The owner or operator shall adjust PM, NO_X, SO_2, and CO pollutant concentrations to 0 percent excess air or 0 percent O_2 using Equation 7 of this section:

$$C_{adj} = C_{meas}\left[\frac{20.9_c}{\left(20.9 - \%O_2\right)}\right] \qquad \text{(Eq. 7)}$$

Where:

C_{adj} = pollutant concentration adjusted to 0 percent excess air or O_2, parts per million (ppm) or g/dscm;

C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm;

20.9_c = 20.9 percent O_2–0.0 percent O_2 (defined O_2 correction basis), percent;

20.9 = O_2 concentration in air, percent; and

$\%O_2$ = O_2 concentration measured on a dry basis, percent.

(e) * * *

(3) Compute the site-specific limit using Equation 8 of this section:

$$Opacity\ Limit = Opacity_{st}\ x \left(\frac{1\ lb/1{,}000\ lb\ coke\ burn}{PMEmR_{st}}\right) \qquad \text{(Eq. 8)}$$

Where:

Opacity limit = Maximum permissible hourly average opacity, percent, or 10 percent, whichever is greater;

$Opacity_{st}$ = Hourly average opacity measured during the source test runs, percent; and

$PMEmR_{st}$ = PM emission rate measured during the source test, lb/1,000 lb coke burn.

* * * * *

(h) * * *

(5) * * *

(iv) The owner or operator shall use Equation 7 of this section to adjust pollutant concentrations to 0 percent O_2 or 0 percent excess air.

* * * * *

10. Section 60.105a is amended by:

a. Revising paragraph (b) introductory text and paragraphs (b)(2)(i) and (b)(2)(ii); and

b. Revising paragraph (i)(5) to read as follows:

§ 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units (FCU).

* * * * *

(b) *Control device operating parameters.* Each owner or operator of a FCCU or FCU subject to the PM per coke burn-off emissions limit in § 60.102a(b)(1) shall comply with the requirements in paragraphs (b)(1) and (2) of this section.

* * * * *

(2) * * *

(i) The owner or operator shall install, operate, and maintain each monitor according to Performance Specifications 3 and 4 of Appendix B to part 60.

(ii) The owner or operator shall conduct performance evaluations of each CO_2, O_2, and CO monitor according to the requirements in § 60.13(c) and Performance Specifications 3 and 4 of Appendix B to part 60. The owner or operator shall use Method 3 of Appendix A–3 to part 60 and Method 10, 10A, or 10B of Appendix A–4 to part 60 for conducting the relative accuracy evaluations.

* * * * *

(i) * * *

(5) All rolling 7-day periods during which the average concentration of SO_2 as measured by the SO_2 CEMS under § 60.105a(g) exceeds 50 ppmv, and all rolling 365-day periods during which the average concentration of SO_2 as measured by the SO_2 CEMS exceeds 25 ppmv.

* * * * *

11. Section 60.107a is amended by:

a. Revising the section heading;

b. Revising paragraph (a)(2)(i);

c. Revising paragraph (c) introductory text and paragraphs (c)(1) and (c)(6);

d. Redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively;

e. Adding a new paragraph (d);

f. Revising newly redesignated paragraph (e);

g. Revising newly redesignated paragraph (f) introductory text; and

h. Revising newly redesignated paragraphs (g)(3) and (g)(4) to read as follows:

§ 60.107a Monitoring of emissions and operations for process heaters and other fuel gas combustion devices.

(a) * * *

(2) * * *

(i) The owner or operator shall install, operate, and maintain each H_2S monitor according to Performance Specification 7 of Appendix B to part 60. The span value for this instrument is 300 ppmv H_2S.

* * * * *

(c) *Process heaters complying with the* NO_X *concentration-based limit.* The owner or operator of a process heater subject to the NO_X emission limit in § 60.102a(g)(2) and electing to comply with the applicable emission limit in § 60.102a(g)(2)(i)(A), (g)(2)(ii)(A), (g)(2)(iii)(A), or (g)(2)(iv)(A) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of NO_X emissions into the atmosphere according to the requirements in paragraphs (c)(1) through (5) of this

section, except as provided in paragraph (c)(6) of this section. The monitor must include an O_2 monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each NO_X monitor according to Performance Specification 2 of Appendix B to part 60. The span value of this NO_X monitor must be between 2 and 3 times the applicable emission limit, inclusive.

* * * * *

(6) The owner or operator of a process heater that has a rated heating capacity of less than 100 MMBtu and is equipped with combustion modification-based technology to reduce NO_X emissions (i.e., low-NO_X burners, ultra-low-NO_X burners) may elect to comply with the monitoring requirements in paragraphs (c)(1) through (5) of this section or, alternatively, the owner or operator of such a process heater shall conduct biennial performance tests, establish a maximum excess oxygen concentration operating limit, and comply with the O_2 monitoring requirements in paragraphs (c)(3) through (5) of this section to demonstrate compliance.

(d) *Process heaters complying with the* NO_X *heating value-based limit.* The owner or operator of a process heater subject to the NO_X emissions limit in § 60.102a(g)(2) and electing to comply with the applicable emissions limit in § 60.102a(g)(2)(i)(B), (g)(2)(ii)(B), or (g)(2)(iii)(B) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of NO_X emissions into the atmosphere and shall determine the F factor of the fuel gas stream no less frequently than once per day according to the monitoring requirements in paragraphs (d)(1) through (4) of this section. The owner or operator of a co-fired process heater subject to the NO_X emission limit in § 60.102a(g)(2) and electing to comply with the heating value-based limit in § 60.102a(g)(2)(iv)(B) shall also install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of NO_X emissions into the atmosphere according to the monitoring requirements in paragraph (d)(1) of this section, an instrument for continuously monitoring and recording the flow rate of the fuel oil and fuel gas fed to the process heater according to the monitoring requirements in paragraph (d)(5) and (6) of this section, and shall determine the heating value of the fuel oil and fuel gas streams no less frequently than once per day according to the monitoring requirements in paragraph (d)(7) of this section.

(1) The owner or operator shall install, operate, and maintain each NO_X monitor according to the requirements in paragraphs (c)(1) through (5) of this section. The monitor must include an O_2 monitor for correcting the data for excess air.

(2) Except as provided in paragraph (d)(3) of this section, the owner or operator shall sample and analyze each fuel stream fed to the process heater using the methods and equations in section 12.3.2 of Method 19 of Appendix A–7 to part 60 to determine the F factor on a dry basis. If a single fuel gas system provides fuel gas to several process heaters, the F factor may be determined at a single location in the fuel gas system provided it is representative of the fuel gas fed to the affected process heater(s).

(3) As an alternative to the requirements in paragraph (d)(2) of this section, the owner or operator of a gas-fired process heater shall install, operate, and maintain a gas composition analyzer and determine the average F factor of the fuel gas using the factors in Table 1 of this subpart and Equation 9 of this section. If a single fuel gas system provides fuel gas to several process heaters, the F factor may be determined at a single location in the fuel gas system provided it is representative of the fuel gas fed to the affected process heater(s).

$$F_d = \frac{1{,}000{,}000 \times \sum\left(X_i \times MEV_i\right)}{\sum\left(X_i \times MHC_i\right)} \qquad \text{(Eq. 9)}$$

Where:

F_d = F factor on dry basis at 0% excess air.

X_i = mole or volume fraction of each component in the fuel gas.

MEV_i = molar exhaust volume, dry standard cubic feet per mole (dscf/mol).

MHC_i = molar heat content, Btu per mole (Btu/mol).

1,000,000 = unit conversion, Btu per MMBtu.

(4) The owner or operator shall conduct performance evaluations of each compositional monitor according to the requirements in Performance Specification 9 of Appendix B to part 60. Method 18 of Appendix A–6 to part 60 shall be used for conducting the relative accuracy evaluations. The following methods are acceptable alternatives to EPA Method 18 of Appendix A–2 to part 60:

(i) ASTM D1945–03, Standard Method for Analysis of Natural Gas by Gas Chromatography (incorporated by reference-see § 60.17);

(ii) ASTM D6420–99 (Reapproved 2004) Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference-see § 60.17);

(iii) ASTM D1946–90 (Reapproved 2006), Standard Method for Analysis of Reformed Gas by Gas Chromatography (incorporated by reference-see § 60.17); and

(iv) Gas Processors Association Standard 2261–00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography (incorporated by reference-see § 60.17).

(5) The owner or operator shall conduct performance evaluations of each fuel gas flow monitor according to the requirements in § 60.13(c) and Performance Specification 6 of Appendix B to part 60. Method 2, 2A, 2B, 2C, or 2D of Appendix A–2 to part 60 shall be used for conducting the relative accuracy evaluations. The following methods are acceptable alternatives to EPA Method 2, 2A, 2B, 2C, or 2D of Appendix A–2 to part 60:

(i) ASME MFC–3M–1989 (Reaffirmed 1995), Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi (incorporated by reference-see § 60.17);

(ii) ASME MFC–4M–1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters (incorporated by reference-see § 60.17);

(iii) ASME–MFC–5M–1985, (Reaffirmed 1994), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters (incorporated by reference-see § 60.17);

(iv) ASME MFC–6M–1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters (incorporated by reference-see § 60.17);

(v) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles (incorporated by reference-see § 60.17);

(vi) ASME MFC–9M–1988 (Reaffirmed 2001), Measurement of Liquid Flow in Closed Conduits by Weighing Method (incorporated by reference-see § 60.17);

(vii) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters Second Revision, April 1996 (incorporated by reference-see § 60.17); and

(viii) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, First Edition, Chapter 22-Testing Protocol, Section 2-Differential Pressure Flow Measurement Devices, August 2005 (incorporated by reference-see § 60.17).

(6) The owner or operator shall conduct install, operate, and maintain each fuel oil flow monitor according to the manufacturer's recommendations.

(7) The owner or operator shall determine the higher heating value of each fuel fed to the process heater using any of the applicable methods included in paragraphs (d)(7)(i) through (v) of this section. If a common fuel supply system provides fuel gas or fuel oil to several process heaters, the higher heating value of the fuel in each fuel supply system may be determined at a single location in the fuel supply system provided it is representative of the fuel fed to the affected process heater(s).

(i) ASTM D240–02, (Reapproved 2007), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (incorporated by reference-see § 60.17).

(ii) ASTM D1826–94 (Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter (incorporated by reference-see § 60.17).

(iii) ASTM D4809–06, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method) (incorporated by reference-see § 60.17).

(iv) ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion (incorporated by reference-see § 60.17).

(v) Gas Processors Association Standard 2172–96, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis (incorporated by reference—see § 60.17).

(8) The owner or operator of a process heater that has a rated heating capacity of less than 100 MMBtu and is equipped with combustion modification based technology to reduce NO_X emissions (i.e., low-NO_X burners or ultra-low NO_X burners) may elect to comply with the monitoring requirements in paragraphs (d)(1) through (7) of this section or, alternatively, the owner or operator of such a process heater shall conduct biennial performance tests, establish a maximum excess oxygen concentration operating limit, and comply with the O_2 monitoring requirements in paragraphs (c)(3) through (5) of this section to demonstrate compliance.

(e) *Sulfur monitoring for affected flares.* The owner or operator of an affected flare subject to § 60.103a(b) shall determine reduced sulfur compound concentrations in accordance with paragraph (e)(1) of this section or total sulfur compound concentrations in accordance with either paragraph (e)(2) or (3) of this section.

(1) The owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of reduced sulfur compounds in flare gas. The owner or operator of a modified flare must install this instrument no later than 18 months after the flare becomes an affected flare subject to this subpart unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the owner or operator of a modified flare must install this instrument no later than 2 years after the flare becomes an affected flare subject to this subpart.

(i) The owner or operator shall install, operate, and maintain each reduced sulfur compounds CEMS according to Performance Specification 5 of Appendix B to part 60.

(ii) The owner or operator shall conduct performance evaluations of each reduced sulfur compounds monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Method 15 or 15A of Appendix A–5 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A–5 to part 60.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60 for each reduced sulfur monitor.

(2) The owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of total sulfur compounds in flare gas. The owner or operator of a modified flare must install this instrument no later than 18 months after the flare becomes an affected flare subject to this subpart unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the owner or operator of a modified flare must install this instrument no later than 2 years after the flare becomes an affected flare subject to this subpart.

(i) The owner or operator shall install, operate, and maintain each total sulfur compounds CEMS according to Performance Specification 5 of Appendix B to part 60.

(ii) The owner or operator shall conduct performance evaluations of each total sulfur compounds monitor according to the requirements in § 60.13(c) and Performance Specification 5 of Appendix B to part 60. The owner or operator shall use Method 16 or 16A of Appendix A–6 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 16A of Appendix A–6 to part 60.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60 for each reduced sulfur monitor.

(3) The owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of H_2S in flare gas according to the requirements in paragraphs (e)(3)(i) through (iii) of this section and shall collect and analyze samples of flare gas and calculate total sulfur concentrations as specified in paragraphs (e)(3)(iv) through (ix) of this section. The owner or operator of a modified flare must install this H_2S monitor no later than 18 months after the flare becomes an affected flare subject to this subpart unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case the owner or operator of a modified flare must install this instrument no later than 2 years after the flare becomes an affected flare subject to this subpart.

(i) The owner or operator shall install, operate, and maintain each H_2S monitor according to Performance Specification 7 of Appendix B to part 60. The span value must be between 1 and 5 percent (by volume) inclusive. A single dual range H_2S monitor may be used to comply with the requirements of this paragraph and paragraph (a)(2) of this section provided the applicable span specifications are met.

(ii) The owner or operator shall conduct performance evaluations of each H_2S monitor according to the requirements in § 60.13(c) and Performance Specification 7 of Appendix B to part 60. The owner or operator shall use Method 11, 15, or 15A of Appendix A–5 to part 60 for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A of Appendix A–5 to part 60.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in Appendix F to part 60 for each H_2S monitor.

(iv) In the first 10 operating days after the flare may be required to perform a root cause analysis under § 60.103a(b)(1), the owner or operator

shall collect representative daily samples of the flare gas. The samples may be grab samples or integrated samples. The owner or operator shall take subsequent representative daily samples at least once per week or as required in paragraph (e)(3)(vii) of this section.

(v) The owner or operator shall analyze each daily sample for total sulfur using Method 16A of Appendix A–6 to part 60, ASTM Method D4468–85 (Reapproved 2006), ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry'' (incorporated by reference—see § 60.17), or ASTM Method D5504–01 (Reapproved 2006), ''Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence'' (incorporated by reference—see § 60.17).

(vi) The owner or operator shall develop a 10-day average total sulfur-to-H_2S ratio and 95 percent confidence interval as follows:

(A) Calculate the ratio of the total sulfur concentration to the H_2S concentration for each day during which samples are collected.

(B) Determine the 10-day average total sulfur-to-H_2S ratio as the arithmetic average of the daily ratios calculated in paragraph (e)(3)(vi)(A) of this section.

(C) Determine the 95 percent confidence interval for the distribution of daily ratios based on the 10 individual daily ratios.

(vii) For each day during the period when data are being collected to develop a 10-day average, the owner or operator shall estimate the total sulfur concentration using the measured total sulfur concentration measured for that day.

(viii) For all days other than those during which data are being collected to develop a 10-day average, the owner or operator shall multiply the most recent 10-day average total sulfur-to-H_2S ratio by the daily average H_2S concentrations obtained using the monitor as required by paragraph (e)(3)(i) through (iii) of this section to estimate total sulfur concentrations.

(ix) If the total sulfur-to-H_2S ratio for a subsequent weekly sample is outside the 95 percent confidence interval for the most recent distribution of daily ratios, the owner or operator shall develop a new 10-day average ratio and 95 percent confidence interval based on data for the outlying weekly sample plus data collected over the following 9 operating days.

(f) *Flow monitoring for flares.* The owner or operator of an affected flare subject to § 60.103a(a)(4) shall install, operate, calibrate, and maintain CPMS to measure and record the flare gas flow rate. The owner or operator of a modified flare shall install this instrument by no later than 18 months after the flare becomes an affected flare subject to this subpart unless the owner or operator of the affected flare commits in writing to install a flare gas recovery system, in which case flow monitoring is not required until after the flare has been an affected flare subject to this subpart for 2 years.

* * * * *

(g) * * *

(3) All rolling 365-day periods during which the average concentration of NO_X as measured by the NO_X continuous monitoring system required under paragraph (c) or (d) of this section exceeds:

(i) 40 ppmv or 0.035 lb/MMBtu for a newly constructed process heater or a modified or reconstructed natural draft process heater;

(ii) 60 ppmv or 0.055 lb/MMBtu for a modified or reconstructed forced draft process heater;

(iii) 150 ppmv or the daily average emission limit calculated using Equation 3 in § 60.102a(g)(2)(iv)(B) for a co-fired process heater; and

(iv) The site-specific limit determined by the Administrator under § 60.102a(i).

(4) All daily periods during which the concentration of NO_X as measured by the NO_X continuous monitoring system required under paragraph (d) of this section exceeds the applicable emissions limit in § 60.102a(g)(2)(iv).

12. Section 60.108a is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c)(6) introductory text and paragraphs (c)(6)(ii) through (vi);

c. Adding paragraphs (c)(6)(vii), (viii) and (ix);

d. Adding paragraph (c)(7); and

e. Revising paragraph (d)(5) to read as follows:

§ 60.108a Recordkeeping and reporting requirements.

* * * * *

(b) Each owner or operator subject to an emissions limitation in § 60.102a or work practice standard in § 60.103a shall notify the Administrator of the specific monitoring provisions of §§ 60.105a, 60.106a, and 60.107a with which the owner or operator seeks to comply. The notification must include, if applicable, a written statement that the owner or operator of an affected flare is installing a flare gas recovery system or additional amine adsorption and stripping columns. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3).

(c) * * *

(6) The owner or operator shall record and maintain records of discharges greater than 500 lb SO_2 in any 24-hour period from any affected flare, discharges greater than 500 lb SO_2 in excess of the allowable limits from a fuel gas combustion device other than a flare or sulfur recovery plant, and discharges to an affected flare in excess of 500,000 scf in any 24-hour period. The following information shall be recorded no later than 45 days following the end of a discharge exceeding the thresholds:

* * * * *

(ii) The date and time the discharge was first identified and the duration of the discharge.

(iii) The measured or calculated cumulative quantity of gas discharged over the discharge duration. If the discharge duration exceeds 24 hours, record the discharge quantity for each 24-hour period. For a flare, record the measured or calculated cumulative quantity of gas discharged to the flare over the discharge duration. If the discharge duration exceeds 24 hours, record the quantity of gas discharged to the flare for each 24-hour period. Engineering calculations are allowed for fuel gas combustion devices other than flares.

(iv) For each discharge greater than 500 lb SO_2 in any 24-hour period from a flare, the measured reduced sulfur concentration, measured total sulfur concentration, or both the measured H2S concentration and the estimated total sulfur concentration in the fuel gas at a representative location in the flare inlet.

(v) For each discharge greater than 500 lb SO_2 in excess of the applicable short-term emissions limit in § 60.102a(g)(1) from a fuel gas combustion device other than a flare, either the measured concentration of H2S in the fuel gas or the measured concentration of SO_2 in the stream discharged to the atmosphere. Process knowledge can be used to make these estimates for fuel gas combustion devices other than flares.

(vi) For each discharge greater than 500 lb SO_2 in excess of the allowable limits from a sulfur recovery plant, either the measured concentration of reduced sulfur or SO_2 discharged to the atmosphere.

(vii) For each discharge greater than 500 lb SO_2 in any 24-hour period from any affected flare or discharge greater than 500 lb SO_2 in excess of the allowable limits from a fuel gas

combustion device other than a flare or sulfur recovery plant, the cumulative quantity of H_2S and SO_2 released into the atmosphere. For releases controlled by flares, assume 99 percent conversion of reduced sulfur or total sulfur to SO_2. For other fuel gas combustion devices, assume 99 percent conversion of H_2S to SO_2.

(viii) The steps that the owner or operator took to limit the emissions during the discharge.

(ix) Results of any root cause analysis and corrective action analysis conducted as required in § 60.103a(a)(4) and (5) and § 60.103a(b), including a statement noting whether the discharge resulted from the same root cause identified in a previous analysis, and either a description of the corrective action and a schedule for implementation or an explanation of why corrective action is not necessary as required in § 60.103a(c).

(7) If the owner or operator complies with § 60.107a(d)(3) for a flare, records of the H_2S and total sulfur analyses of each grab or integrated sample, the calculated daily total sulfur-to-H_2S ratios, the calculated 10-day average total sulfur-to-H_2S ratios, and the 95 percent confidence intervals for each 10-day average total sulfur-to-H_2S ratio.

(d) * * *

(5) The information described in paragraph (c)(6) of this section for all discharges for which a root cause analysis, corrective action analysis, and implementation of corrective action were required by § 60.103a(a)(4) and (5), § 60.103a(b), and § 60.103a(c).

* * * * *

13. Section 60.109a is amended by revising paragraph (b) introductory text and adding paragraph (b)(4) to read as follows:

§ 60.109a Delegation of authority.

* * * * *

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, 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.

* * * * *

(4) Approval of a petition to establish a site-specific NO_X emissions limit for a modified or reconstructed process heater under § 60.102a(i).

14. Table 1 to subpart Ja is added to read as follows:

Tables to Subpart Ja of Part 60

TABLE 1 TO SUBPART JA OF PART 60—MOLAR EXHAUST VOLUMES AND MOLAR HEAT CONTENT OF FUEL GAS CONSTITUENTS

Constituent	MEV[a] dscf/mol	MHC[b] Btu/mol
Methane (CH_4) ..	7.28	842
Ethane (C_2H_6) ...	12.94	1,475
Hydrogen (H_2) ...	1.61	269
Ethene (C_2H_4) ...	11.34	1,335
Propane (C_3H_8)	18.61	2,100
Propene (C_3H_6)	17.01	1,947
Butane (C_4H_{10})	24.28	2,717
Butene (C_4H_8) ...	22.67	2,558
Inerts	0.85	0

[a] MEV = molar exhaust volume, dry standard cubic feet per mole (dscf/mol).

[b] MHC = molar heat content, Btu per mole (Btu/mol).

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Federal Register

Monday,
December 22, 2008

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007; Interim Final Rule, Direct Final Rule; Stay

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8753–7]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule; stay.

SUMMARY: EPA is making an interim final determination to extend the stay of certain requirements in the standards of performance for petroleum refineries.

DATES: This interim final determination is effective on December 26, 2008, and will expire on February 24, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0011. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS Code [1]	Examples of regulated entities
Industry	32411	Petroleum refiners.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards for petroleum refineries. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of the new source performance standards (NSPS) to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is available on the WWW through the Technology Transfer Network (TTN). Following signature, EPA will post a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

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

I. Background Information
II. What action is EPA taking?
III. 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 Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background Information

Standards of performance for petroleum refineries were promulgated on June 24, 2008, that included: (1) Final amendments to the existing petroleum refineries NSPS in 40 CFR part 60, subpart J; and (2) a new petroleum refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). The preamble to that rule contained an incorrect effective date and contained an error in the Congressional Review Act (CRA) statement in the Statutory and Executive Order Reviews section. To address that error, the effective date of 40 CFR part 60, subpart Ja was stayed for 60 days until September 26, 2008. The amendments in 40 CFR part 60, subpart J were not affected and remained effective from June 24, 2008.

On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRA), and the Western States Petroleum Association (WSPA) (collectively referred to as ''Industry Petitioners'') requested an administrative stay under Clean Air Act section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja (Docket Item No. EPA–HQ–OAR–2007–0011–245). On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of 40 CFR part 60, subpart Ja for which they had previously requested a stay (Docket Item No. EPA–HQ–OAR–2007–0011–267). Specifically, Industry Petitioners requested that EPA reconsider the following provisions in subpart Ja: (1) The newly promulgated definition of ''modification'' for flares (40 CFR 60.100a(c)); (2) the definition of ''flare'' (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flares (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d) and (e)); and (6) the nitrogen oxide (NO_X) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on

August 21, 2008, Industry Petitioners identified additional issues for reconsideration (Docket Item No. EPA–HQ–OAR–2007–0011–246). Industry Petitioners identified a number of issues with the standards for fluid catalytic cracking units (FCCU), fluid coking units (FCU), fuel gas combustion devices, sulfur recovery plants, and delayed coking units. The issues ranged from disagreeing with the best demonstrated technology analyses for FCCU/FCU and delayed coking units to requests for clarification of requirements regarding averaging times for various limits, to identifying inconsistencies in compliance methods, to simple typographical errors. A total of 82 items were identified in this submittal.

On August 25, 2008, HOVENSA, LLC (HOVENSA) filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) The NO_X limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of ''flare'' and ''modification'' (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); and (3) the depressurization work practice standard for delayed coking units (40 CFR 60.103a(c)) (Docket Item No. EPA–HQ–OAR–2007–0011–247). The petition also requested that EPA stay the effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural Resources Defense Council (Environmental Petitioners) requesting that EPA reconsider several aspects of 40 CFR part 60, subpart Ja (Docket Item No. EPA–HQ–OAR–2007–0011–243). The petition identified the following issues for reconsideration: (1) EPA's decision not to promulgate standards for carbon dioxide and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); (3) the NO_X limit for FCCU (40 CFR 60.102a(b)(2)); and (4) the particulate matter limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners, Environmental Petitioners did not seek a stay of these provisions during reconsideration.

On September 26, 2008, EPA issued a **Federal Register** notice (73 FR 55751) granting reconsideration of the following issues: (1) The newly promulgated definition of ''modification'' for flares; (2) the definition of ''flare;'' (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flares; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO_X limit for process heaters. EPA also granted Industry Petitioners' and HOVENSA's request for a 90-day stay for those same provisions under reconsideration.

In the Final Rules section of today's **Federal Register**, we have published a direct final rule extending the stay until a final decision on the reconsideration has been reached. In the Proposed Rules section of today's **Federal Register**, we have also published a parallel proposal extending the stay until a final decision on the reconsideration has been reached. Based on today's direct final and parallel proposal extending the stay, we are taking this final action, effective for 60 days, beginning on December 26, 2008, to prevent facilities from being out of compliance with provisions, at least some of which, we anticipate modifying upon reconsideration.

EPA is providing the public with an opportunity to comment on the stay extension in both the direct final rule and parallel proposal. However, we are not taking comment on this final action. We believe it is appropriate to continue the stay that is currently in place until the direct final action becomes effective to avoid a lapse in the stay and create potential compliance problems with provisions that we believe may need to be revised.

II. What action is EPA taking?

We are making an interim final determination to extend the stay for 60 days based on our concurrent direct final action and parallel proposal. EPA has determined that a stay is necessary for the provisions under reconsideration. The 90-day stay that began on September 26, 2008, expires on December 25, 2008. At that time, facilities will be required to comply with the final rules as published (73 FR 35838) unless an extension is set in place. EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)).

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has stated in the reconsideration and stay notice (73 FR 55751) the reasons for granting the 90-day stay. As these reasons remain valid, we believe it is still appropriate for the stay to be in effect until we have reached a final decision on the reconsideration. Because the initial stay expires on December 25, 2008 and the direct final action would not be effective until February 24, 2009, it is not in the public's best interest to require compliance with the rules as published during the gap between the two dates. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to extend the initial stay while the public has an opportunity to comment on the direct final action.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action results in no changes to the information collection requirements of the NSPS and will have no impact on the information collection estimate of project cost and hour burden previously submitted to OMB. However, the information collection requirements contained in the existing regulation (40 CFR part 60, subpart Ja) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, have been sent to OMB for approval under EPA ICR number 2263.02. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore, it is not subject to the notice and comment requirement.

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, or tribal governments or the private sector. This action imposes no enforceable duty 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 UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action only extends the stay of certain provisions and does not impose any additional enforceable duty.

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 action 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 will not impose direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

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). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because the NSPS for petroleum refineries are based on technology performance.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. No. 104–113; 12(d) (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 EPA decides not to use available and applicable VCS.

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

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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 26, 2008. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

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

Dated: December 12, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

§ 60.100a [AMENDED]

■ 2. In § 60.100a, paragraph (c) is stayed from December 26, 2008, until February 24, 2009.

§ 60.101a [AMENDED]

■ 3. The definition of ''flare'' in § 60.101a is stayed from December 26, 2008, until February 24, 2009.

§ 60.102a [AMENDED]

■ 4. In § 60.102a, paragraph (g) is stayed from December 26, 2008, until February 24, 2009.

§ 60.107a [AMENDED]

■ 5. In § 60.107a, paragraphs (d) and (e) are stayed from December 26, 2008, until February 24, 2009.

[FR Doc. E8–29976 Filed 12–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8753–8]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; stay.

SUMMARY: EPA is taking direct final action on the new standards of performance for petroleum refineries. On June 24, 2008, EPA promulgated new standards for petroleum refineries. Following that action, the Administrator received three petitions for reconsideration. In response to the petitions, EPA granted a stay of certain provisions in the new standards. In this action, EPA is extending the stay of the requirements under reconsideration until a final decision is reached on these issues.

DATES: This rule is effective on February 24, 2009, without further notice, unless EPA receives adverse comment by January 21, 2009 or receives a request for a public hearing. If EPA receives adverse comment or a hearing request, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0011, 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: Air and Radiation Docket (2822T), Docket ID No. EPA–HQ–OAR–2007–0011, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by Courier, deliver comments to: Air and Radiation Docket (2822T), 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–2007–0011. 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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, 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 and Radiation Docket is (202) 566–1742.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; fax number: (919) 541–0246; e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: *Organization of This Document.* The following outline is provided to aid in locating information in this preamble.

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 for EPA?
IV. How do I obtain a copy of this document and other related information?
V. Background Information
VI. What action is EPA taking?
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 Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Why is EPA using a direct final rule?

EPA is publishing the action without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to extend the stay if adverse comments are received on this direct final action. 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 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 would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS [1] code	Examples of regulated entities
Industry	32411	Petroleum refiners.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the standards for petroleum refineries. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 60.100a. If you have any questions regarding the applicability of the new source performance standards (NSPS) to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit this information to EPA through *http://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), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2007–0011. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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.

IV. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final NSPS for petroleum refineries (40 CFR part 60, subpart Ja) is Docket ID No. EPA–HQ–OAR–2007–0011.

Worldwide Web (WWW). In addition to being available in the docket, electronic copies of the final amendments and this action are available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of this notice on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

V. Background Information

Standards of performance for petroleum refineries were promulgated on June 24, 2008 that included: (1) Final amendments to the existing petroleum refineries NSPS in 40 CFR part 60, subpart J; and (2) a new petroleum refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). The preamble to that rule contained an incorrect effective date and contained an error in the Congressional Review Act (CRA) statement in the Statutory and Executive Order Reviews section. To address that error, the effective date of 40 CFR part 60, subpart Ja was stayed for 60 days until September 26, 2008. The amendments in 40 CFR part 60, subpart J were not affected and remained effective from June 24, 2008.

On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRA), and the Western States Petroleum Association (WSPA) (collectively referred to as ''Industry Petitioners'') requested an administrative stay under Clean Air Act (CAA) section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja (Docket Item No. EPA–HQ–OAR–2007–0011–245). On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of 40 CFR part 60, subpart Ja for which they had previously requested a stay (Docket Item No. EPA–HQ–OAR–2007–0011–267). Specifically, Industry Petitioners requested that EPA reconsider the following provisions in subpart Ja: (1) The newly promulgated definition of ''modification'' for flares (40 CFR 60.100a(c)); (2) the definition of ''flare'' (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flares (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d) and (e)); and (6) the nitrogen oxide (NO_X) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on August 21, 2008, Industry Petitioners identified additional issues for reconsideration (Docket Item No. EPA–HQ–OAR–2007–0011–246). Industry Petitioners identified a number of issues with the standards for fluid catalytic cracking units (FCCU), fluid coking units (FCU), fuel gas combustion devices, sulfur recovery plants, and delayed coking units. The issues ranged from disagreeing with the best demonstrated technology analyses for FCCU/FCU and delayed coking units to requests for clarification of requirements regarding averaging times for various limits, to identifying inconsistencies in compliance methods, to simple typographical errors. A total of 82 items were identified in this submittal.

On August 25, 2008, HOVENSA, LLC (HOVENSA) filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) The NO_X limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of ''flare'' and ''modification'' (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); and (3) the depressurization work practice standard for delayed coking units (40 CFR 60.103a(c)) (Docket Item No. EPA–HQ–OAR–2007–0011–247). The petition also requested that EPA stay the effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural

Resources Defense Council (Environmental Petitioners) requesting that EPA reconsider several aspects of 40 CFR part 60, subpart Ja (Docket Item No. EPA–HQ–OAR–2007–0011–243). The petition identified the following issues for reconsideration: (1) EPA's decision not to promulgate standards for carbon dioxide and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g) through (i), 60.103a(a) and (b)); (3) the NO_X limit for FCCU (40 CFR 60.102a(b)(2)); and (4) the particulate matter limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners, Environmental Petitioners did not seek a stay of these provisions during reconsideration.

On September 26, 2008, EPA issued a **Federal Register** notice (73 FR 55751) granting reconsideration of the following issues: (1) The newly promulgated definition of ''modification'' for flares; (2) the definition of ''flare''; (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flares; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO_X limit for process heaters. EPA also granted Industry Petitioners' and HOVENSA's request for a 90-day stay for those same provisions under reconsideration.

VI. What action is EPA taking?

This action extends the stay of the provisions under reconsideration. As noted above, EPA granted a 90-day stay of these provisions under CAA section 307(d)(7)(B) on September 26, 2008. That stay expires on December 25, 2008. We are extending the stay until we have reached a final decision on all of the issues for which reconsideration was granted. While the Agency does not generally grant stays pending reconsideration, we believe that the unique compliance issues created by our final rule warrant a limited stay pending reconsideration. As we explained in granting the initial stay:

> We are staying the first five provisions listed above because the final approach to regulating flare emissions was first introduced in the final rule and represented significant changes from the proposal. Facilities had no chance to comment on these new requirements in the final rule. Accordingly, we have reason to believe that certain facilities may be out of compliance with requirements for which they had no notice or time to come into compliance. Moreover, a stay is appropriate because in reconsidering these requirements both the affected universe and the substantive requirements could change. It should be noted that as a consequence of staying the fuel gas combustion device sulfur limits as they apply to flares, we are staying the requirement for all fuel gas combustion devices. * * * Although this is not a preferred outcome, it is unavoidable due to the structure of the rule and is an unintended consequence of this action.
>
> We are staying the sixth provision listed above because information provided by Industry Petitioners and HOVENSA has led the Agency to question whether the emission limits in the final rule are achievable and represent best demonstrated technology. The information provided has convinced us that certain facilities may suffer undue hardship in attempting compliance with this limit. Granting a stay of this requirement while we reconsider this limit is, therefore, necessary to prevent any possible harm that may occur.

As these reasons remain valid, we have decided to extend the limited stay for the remainder of our reconsideration process.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action results in no changes to the information collection requirements of the NSPS and will have no impact on the information collection estimate of project cost and hour burden previously submitted to the Office of Management and Budget (OMB). However, the information collection requirements contained in the existing regulation (40 CFR part 60, subpart Ja) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, have been sent to OMB for approval under EPA ICR number 2263.02. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 the petroleum refinery NSPS on small entities, small entity is defined as: (1) A small business according to Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity; (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 that is independently owned and operated and is not dominant in its field. For petroleum refiners, a small business has no more than 1,500 employees.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on any entities because it does not impose any additional regulatory requirements.

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, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

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. This action only extends the stay of certain provisions and does not impose any additional enforceable duty.

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 action 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 will not impose direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

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). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because the NSPS for petroleum refineries are based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (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, with explanations when EPA does not use available and applicable VCS.

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

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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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 United States Senate, the United States 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 on February 24, 2009.

List of Subjects in 40 CFR Part 60

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

Dated: December 12, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

§ 60.100a [AMENDED]

■ 2. In § 60.100a, paragraph (c) is stayed from February 24, 2009, until further notice.

§ 60.101a [AMENDED]

■ 3. The definition of ''flare'' in § 60.101a is stayed from February 24, 2009, until further notice.

§ 60.102a [AMENDED]

■ 4. In § 60.102a, paragraph (g) is stayed from February 24, 2009, until further notice.

§ 60.107a [AMENDED]

■ 5. In § 60.107a, paragraphs (d) and (e) are stayed from February 24, 2009, until further notice.

[FR Doc. E8–29980 Filed 12–19–08; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
December 22, 2008

Part VI

Department of Housing and Urban Development

24 CFR Part 291

Disposition of HUD-Owned Single Family Assets in Revitalization Areas; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4988–P–01]

RIN 2502–AH40

Disposition of HUD-Owned Single Family Assets in Revitalization Areas

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a statutorily established program to make HUD-held single family homes and mortgage assets available for sale to units of general local government, states, Indian tribes, nonprofit organizations, and for-profit entities (collectively, purchasers) to provide homeownership opportunities and to promote neighborhood revitalization. Revitalization areas would be identified through application of specified economic and housing criteria. The purchasers would then make available the assets in accordance with a HUD-approved plan to encourage homeownership and revitalize the area.

DATES: Comment Due Date: February 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (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. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000, at 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 204(h) of the National Housing Act—Disposition of Assets in Revitalization Areas

Section 602 of the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) amended section 204 of the National Housing Act (12 U.S.C. 1710) (NHA or the statute), by adding a new subsection (h), which provides the statutory framework for a new program for the disposition of HUD-owned single family assets in revitalization areas (see 12 U.S.C. 1710(h)). In 2004, section 204(h) was further amended by the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, approved December 8, 2004).

Under section 204(h) of the NHA, HUD makes HUD-held single family homes and formerly insured mortgages on single family properties, referred to as ''eligible assets,'' ''available for sale in a manner that promotes the revitalization, through expanded homeownership opportunities, of revitalization areas'' (12 U.S.C. 1710(h)(1).) All properties involved are HUD-held properties; that is, they are properties that were subject to a mortgage insured by HUD and are now owned by HUD pursuant to the payment of insurance benefits under the NHA and the implementing regulations for the NHA programs that are codified in Chapter II of Title 24 of the Code of Federal Regulations (CFR). HUD-held mortgages may also be sold.

Key to the statutory scheme for this program is the concept of a ''revitalization area,'' (Revitalization Area). In accordance with section 204(h)(3) of the NHA (12 U.S.C. 1710(h)(3)), HUD is required to designate Revitalization Areas, which must meet one of the statutory criteria for designation (i.e., having very low median household income, a high concentration of eligible assets, or a low homeownership rate).

B. Eligible Purchasers

Under the statute, an eligible purchaser is a unit of general local government, state, Indian tribe, or a nonprofit organization, as stated in section 204(h)(4)(A) of the NHA (12 U.S.C. 1710(h)(4)(A)), or a for-profit entity, as stated in section 204(h)(5)(B) of the NHA (12 U.S.C. 1710(h)(5)(B)). The statute contemplates two categories of eligible purchasers—preferred purchasers and non-preferred purchasers.

Preferred purchasers are units of general local government, states, and Indian tribes having jurisdiction of the area where the assets are to be sold, as well as nonprofit organizations that make a commitment to purchase categories of single family assets in a specific area, known as an asset control area (ACA), where there is a need for increased homeownership opportunities. The statute requires that such purchasers be provided a preference in the sale of eligible assets. All other eligible purchasers are non-preferred purchasers under the statute. For-profit entities may not be preferred purchasers.

In accordance with section 204(h)(4) of the NHA (12 U.S.C. 1710(h)(4)), preferred purchasers must establish ACAs within Revitalization Areas.

During a period of time to be established by agreement, preferred purchasers must purchase all of the assets HUD owns in particular identified categories at the time the sale agreement is entered into and those that become available during the time period (see section 204(h)(4)(B)(ii) of the NHA (12 U.S.C. 1710(h)(4)(B)(ii)). Section 204(h)(4)(C) of the NHA (12 U.S.C. 1710(h)(4)(C)) directs that the preferred purchasers, in order to be eligible, must have the capacity to make the purchases.

In order to encourage the purchase of assets to use for HUD housing and revitalization purposes, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides for discounts from the appraised value for preferred purchasers. Appraised value must be based on the market value of the property in ''as-is'' physical condition, taking into account: (1) The age and condition of major mechanical and structural systems, and (2) the value of the property appraised for homeownership. Section 204(h)(6) of the NHA also provides, in subsection (C), that ''the Secretary of HUD, in the sole discretion of the Secretary, shall establish the discount * * * for an eligible asset'' (see 12 U.S.C. 1701(h)(6)(C)). In establishing the discount, the Secretary may consider any factor deemed appropriate, including the condition of the property, the extent of the preferred purchaser's resources, the homeownership plan undertaken by the purchaser (see section I.C. below), and the financial safety and soundness of the Mutual Mortgage Insurance Fund. Non-preferred purchasers cannot receive discounts.

Preferred purchasers are recipients of federal financial assistance subject to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (section 504) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), because they obtain HUD properties at a discount. Preferred purchasers are, therefore, required to comply with the section 504 regulations in 24 CFR part 8, including accessibility requirements. Since non-preferred purchasers do not receive discounts and provide their own financing, they are not recipients of federal financial assistance.

C. Sale Agreement

Section 204(h)(7) of the NHA provides that sales of eligible assets may only be made pursuant to a sale agreement (Sale Agreement). The requirement for a Sale Agreement applies to both preferred purchasers and non-preferred purchasers. The Sale Agreement must: (1) Identify the category or categories of assets to be purchased; (2) identify the boundaries of the Revitalization Area and, for a Preferred Purchaser, also the boundaries of the ACA; and (3) identify the source of financing that the purchaser will be using. For preferred purchasers, the Sale Agreement must also include a homeownership plan.

Section 204(h)(5)(A) of the NHA (12 U.S.C. 1710(h)(5)(A)) provides that the homeownership plan must have as its primary purpose the expansion of homeownership in, and the revitalization of, the ACA. Section 204(h)(5)(A) also provides that the homeownership plan must contain specific performance goals for increasing the rate of homeownership, and must also establish rehabilitation standards for real property that meet or exceed minimum standards for housing quality. For non-preferred purchasers, section 204(h)(5)(B) of the NHA (12 U.S.C. 1710(h)(5)(B)) requires that the Sale Agreement include a binding agreement that the purchaser meet certain performance goals for homeownership. However, by agreement, HUD may permit a lower rate of homeownership in ''exceptional circumstances.'' Both preferred and non-preferred purchasers must certify compliance with the performance goals contained in the Sale Agreement (section 204(h)(7)(G) of the NHA; 12 U.S.C. 1710(h)(7)(G)).

II. This Proposed Rule

This proposed rule would create a new subpart G in 24 CFR part 291 to establish the regulations governing the sale of single family assets in Revitalization Areas. Part 291 contains HUD's regulations that address the disposition of HUD-held single family properties. This proposed rule would contain the administrative requirements to implement the program found in section 204(h) of the NHA (12 U.S.C. 1710(h)).

The proposed regulatory language tracks, as much as possible, the language of section 204(h) of the NHA where the statutory language is specific on how the program is to be implemented. This section of the preamble describes the most significant provisions of the proposed rule that build upon the statutory requirements described in Section I of this preamble.

1. *Definition of Eligible Buyer.* Under the proposed rule, an ''eligible buyer,'' which refers to a family (which can consist of a single person) that ultimately buys the property from the preferred or non-preferred purchaser, would have to meet eligibility requirements. Buyers must either: (1) Have income of no more than 115 percent of the area median income and promise to reside in the property as owners for 3 years; or (2) have a member who is a *''teacher,'' ''police officer,''* or *''firefighter/emergency medical technician,''* as those terms are defined under HUD's regulations codifying the Good Neighbor Next Door (GNND) Sales Program at 24 CFR part 291, subpart F.

As noted above in this preamble, the objective of the statute is to promote neighborhood revitalization, with an emphasis on increasing affordable housing opportunities. HUD believes that the income limitation on subsequent buyers helps to ensure both statutory objectives of revitalization and increased homeownership. The threshold of 115 percent of area median income reflects the cross section of income levels that HUD believes is a critical element of neighborhood revitalization. For example, the proposed income limitation is greater than the 80 percent of area median income that HUD uses to define a ''low-income family'' under its public and assisted housing programs authorized under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (*see* 24 CFR 5.603). At the same time, the income limitation focuses on increasing homeownership opportunities for those families for whom good quality homeownership opportunities have been more limited than for higher-income families.

The inclusion of police officers, teachers, and firefighters/emergency medical technicians is consistent with the goals of section 204(h) of the NHA and the GNND Sales Program, which seek to improve the quality of life in distressed communities by encouraging professionals, whose daily responsibilities represent a nexus to the needs of the community, to purchase and live in homes in these communities.

2. *Nonprofit Preferred Purchasers.* The definition of ''preferred purchaser'' at proposed § 291.605 would track the language in section 204(h)(4) of the NHA (12 U.S.C. 1710(h)(4)), which refers to a nonprofit organization, state, Indian tribe, or unit of general local government. The proposed rule further provides that preferred purchasers that are nonprofit organizations would also have to be on the Federal Housing Administration (FHA) Nonprofit Organization Roster under 24 CFR 200.194, and also will be required to have status as a tax-exempt organization under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c). These requirements will help to ensure that participating nonprofit organizations are qualified to participate in FHA activities and meet the eligibility criteria

established by the Internal Revenue Service for qualification as a nonprofit entity.

3. *Partnerships of Preferred Purchasers.* Preferred purchasers, such as a local government and a nonprofit organization, can form partnerships as defined in the rule. Each member of a partnership is separately responsible for meeting all program requirements, including application requirements and obligations under the Sale Agreement and Homeownership Plan.

4. *Revitalization Areas.* Section 291.610 of the proposed rule would address the meaning of Revitalization Areas and provide the details of the criteria for determining Revitalization Areas. This section would track the statutory requirements for a Revitalization Area stated in section 204(h)(3) of the NHA (12 U.S.C. 1710(h)(3)).

The proposed rule defines a Revitalization Area as an area designated by HUD as such and that meets the following criteria: (1) The area is a very low-income area, with a median income of less than 60 percent of the median income for the metropolitan area, or, if the area is not within a metropolitan area, a median income of less than 60 percent of the state median income; (2) there is a disproportionately high concentration of eligible HUD-held assets in the area resulting from a high rate of foreclosure of FHA-insured mortgages in the area, or the area is detrimentally impacted by eligible assets in the vicinity; or (3) the rate for homeownership is substantially below the rate for homeownership in the metropolitan area or, if the area is not within a metropolitan area, below that of the state in which the area is located.

Proposed § 291.610 further provides that HUD will review Revitalization Areas annually, and remove the designation of ''Revitalization Area'' from any geographical area that no longer meets the definition. This removal will occur at the earliest opportunity, such as upon the expiration of the term of the then-current Sale Agreement. However, the proposed rule specifies that such removal of designation shall not modify the terms of a Sale Agreement in effect at the time such designation is removed. A geographic area designated as a Revitalization Area shall continue to be considered as such for purposes of the agreement until its expiration.

5. *Application Requirements.* Section 291.620 of the proposed rule would establish application submission requirements for entities wishing to participate as purchasers under the program. The proposed rule would establish submission requirements that apply solely to each category of preferred purchasers (units of general local government and nonprofit organizations) and non-preferred purchasers, as well as submission requirements applicable to all categories of purchasers. For example, the proposed rule provides that entities that seek to be preferred purchasers would be required to submit an application and that the application reflect no conflicts of interest, as provided in proposed § 291.670. Other documentation that would be required under the proposed rule includes organizational and financial information about the purchaser; an operating plan, including the acquisition schedule; and valid delegations of necessary authority to execute the required contracts and documents.

Section 291.625 of the proposed rule would establish the criteria for review and approval of applications. This section provides that application consideration would be based on the time and date of receipt of a complete application that meets the threshold requirements. The decision on whether or not an application is complete would be solely within HUD's discretion, and if HUD determines that an application is incomplete, HUD would notify the applicant in writing. In such a case, the application will be considered complete once HUD receives the additional materials and determines that they are adequate.

6. *Preference for Preferred Purchasers.* As noted, section 204(h)(4) (12 U.S.C. 1701(h)(4)) of the NHA requires that preferred purchasers be provided a preference in the sale of eligible assets. The proposed rule would implement the statutory preference in two ways. First, proposed § 291.625 provides that if an application from a preferred and a non-preferred purchaser for the same geographic area arrive on the same date, the application from the preferred purchaser will be deemed to have arrived first. Further, under § 291.655 of the proposed rule, HUD would offer financing assistance to preferred purchasers.

7. *Minimum Standards for Housing Quality.* Section 204(h)(5)(B)(iii) of the NHA (12 U.S.C. 1710(h)(5)(B)(iii)) provides that all purchasers are responsible for rehabilitating each asset property purchased to comply with HUD-established minimum standards for housing quality. The proposed rule, at § 291.635, would implement this statutory requirement by providing that all properties purchased under the rule must meet, or be rehabilitated to meet, local building code standards. Any required rehabilitation would be at the purchaser's expense.

8. *Discounts for Preferred Purchasers.* As noted, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides for discounts for preferred purchasers based on the appraised value of the asset as HUD, in its discretion, may determine. There are no discounts for non-preferred purchasers. Section 291.640 would implement three discount classes: (1) A 50 percent discount of the appraised value for assets with a value equal to or greater than $50,000; (2) a discount of $24,900 for properties with an appraised value greater than $25,000 but less than $50,000; and (3) properties with an appraised value of $25,000 or less would have a purchase price of $100.

The proposed discount structure reflects HUD's experience in administering Sale Agreements entered into on a case-by-case basis under the statutory authority of section 204(h) of the NHA. Under those agreements, preferred purchasers receive a discount of: (1) A 50 percent discount for properties with an appraised value equal to or greater than $50,000; (2) a $25,000 discount for properties with an appraised value greater than $25,000 but less than $50,000; and (3) a purchase price of one dollar for properties with an appraised value of $25,000 or less. Table One and Table Two, below, compare the average appraised values, the average discounts, and the average costs of rehabilitating properties purchased in Fiscal Year (FY) 2006 and FY2007 under current Sale Agreements. The final column, which is captioned ''Return to Community,'' provides the percentage by which the average cost of repairs exceeds the average dollar amount of the discount.

TABLE ONE—FY2007 DISCOUNT AND COST COMPARISONS

Appraisal category	Average appraisal value of properties acquired by preferred purchasers in FY 2007	Average HUD discount	Average repair cost	Return to community (repair over discount) (percent)
Equal to or Greater than $50,000	$85,390.07	$42,695.04	$60,594.12	142
Greater than $25,000 but less than $50,000	36,155.80	25,000.00	67,416.06	270
$25,000 or less	19,028.26	19,027.26	57,537.41	302

TABLE TWO—FY2006 DISCOUNT AND COST COMPARISONS

Appraisal category	Average appraisal value of properties acquired by preferred purchasers in FY 2006	Average HUD discount	Average repair cost	Return to community (repair over discount) (percent)
Equal to or Greater than $50,000	$95,249.15	$47,624.58	$56,180.97	118
Greater than $25,000 but less than $50,000	35,738.28	25,000.00	62,525.17	250
$25,000 or less	15,308.04	15,307.04	55,919.25	365

The discount structure being proposed by HUD for regulatory codification largely conforms to the discounts already being provided under current Sale Agreements entered into on a case-by-case basis. As Table One and Table Two demonstrate, the current discount structure reflects the economic realities faced by preferred purchasers. The data indicate that the ''Return to Community'' (the average cost of rehabilitation as a percentage of the dollar discount value) increases as average appraised value decreases. Accordingly, as an offset to these higher rehabilitation costs, a greater percentage discount is provided for the purchase of properties with lower appraised values. For example, in FY2007, the average discount for properties with appraised values of greater than $50,000 was 50 percent of the average appraised value. The ''Return to Community'' of these properties was 142 percent. That same fiscal year, the ''Return to Community'' for properties with an appraised value of $25,000 or less was 302 percent. The average discount for these properties was 99.99 percent of the average appraised value.

The proposed discount structure differs in some minor respects from that currently used. Most importantly, the proposed rule would increase from one to one hundred dollars the purchase price of properties with appraised values of less than $25,000. This increase differentiates the ACA program from the ''Dollar Home'' program authorized under the NHA (see 12 U.S.C. 1715z–11a(b)), and which HUD anticipates to implement through regulation in the near future.

The proposed discount structure, therefore, reflects current discounts that: (1) Are familiar to preferred purchasers, (2) have proven successful as an incentive to participation in the program, and (3) have succeeded in promoting the statutory goals of revitalization with an emphasis on homeownership.

9. *Appraisals of Asset Properties.* As noted, section 204(h)(6)(B) of the NHA (12 U.S.C. 1701(h)(6)(B)) provides that discounts for preferred purchasers be based on the appraised value of the property in ''as is'' physical condition. Section 291.645 of the proposed rule would implement this requirement. Under the proposed rule, HUD will order an appraisal by an appraiser on the FHA appraiser roster under 24 CFR part 200, subpart G, for each property in the ACA to be sold. However, an appraisal would not be required if the property was appraised by an appraiser from the FHA appraiser roster within the previous calendar year.

The purchaser may request an individual new appraisal if the request is made prior to sale and the purchaser demonstrates, in HUD's sole discretion, a reasonable likelihood that a second appraisal would indicate a value that differs by 20 percent or more, higher or lower, from the original appraisal. Additional costs for any new appraisals would be borne by the purchaser, unless the new appraisal indicates a value that differs by 20 percent or more, higher or lower, from the original appraisal.

10. *Conveyance of Eligible Assets.* Section 291.650 of the proposed rule would provide for conveyance of eligible assets. Under this proposed rule, HUD would identify the categories of eligible assets along with the eligible assets available in those categories. The purchaser would respond by presenting an acquisition schedule for HUD review. HUD would consider the schedule along with the purchaser's capacity, and either approve it or suggest modifications. HUD would provide notification of additional assets, as they become available according to a time schedule stated in the regulation.

To ensure compliance with the Sale Agreement, HUD will secure the sale of asset properties with a subordinate mortgage in the amount of the difference between the appraised value of the property and the sales price. HUD shall release the subordination upon compliance of the provisions of the Sale Agreement and sale of the asset property to an eligible buyer.

11. *Sales Price to Eligible Buyers.* The purchaser may elect to establish the sales price of asset properties to eligible buyers using either an individual transaction method or a portfolio-wide method.

Under the transaction method, the sales price of an asset property to an eligible buyer may not exceed the lesser of: (1) The as-rehabilitated appraised value of the asset property; or (2) the HUD-established percentage of the ''net development cost'' (the sum of the acquisition costs of the asset property to the purchaser plus any closing costs, holding costs, or rehabilitation costs

required under § 291.635). The proposed rule provides that HUD initially establishes this percentage at 115 percent. Table Three below illustrates the transaction method in operation:

TABLE THREE—SALES BY PURCHASER—TRANSACTION METHOD

Property	115 percent of net development cost	As-rehabilitated appraised property value	Maximum resale price allowed
A	95,000.00	120,000.00	95,000.00
B	150,000.00	135,000.00	135,000.00
C	75,000.00	100,000.00	75,000.00
D	85,000.00	100,000.00	85,000.00
E	95,000.00	85,000.00	85,000.00
	500,000.00	540,000.00	475,000.00

Estimated Gross Profit/Loss: {1 − [$475,000/((100%/115%) * $500,000]} = 9%.

In order to address possible concerns regarding the recovery of losses where the total net development costs exceed the fair market value of the asset properties in the purchaser's inventory, the proposed rule would permit purchasers to calculate allowable sales price on a portfolio-wide basis. Under this portfolio method, the cumulative sales prices of asset properties sold to eligible buyers during the purchaser's portfolio reporting period may not exceed the lesser of: (1) The total as-rehabilitated appraised value of the asset properties; or (2) the HUD-established allowable of total net development cost for those properties (which, as discussed above, HUD initially proposes to establish at 115 percent). The portfolio reporting period is a 12-month period covered by the Sale Agreement, generally commencing on the date of the Sale Agreement's execution or the anniversary thereof. The portfolio option would permit purchasers to more readily recoup net development costs by selling asset properties at fair market value.

Use of the portfolio method is optional. During each portfolio reporting period, a purchaser may elect either the portfolio method or the transaction method; however, the purchaser may not use both methods concurrently and may not change methods during a portfolio reporting period.

A purchaser electing the portfolio option must deposit into an escrow account the difference between the actual sales price and 115 percent of the net development cost for each transaction. The purchaser must remit principal on each mortgage used to finance purchase of a property when cumulative actual sales are more than 115 percent of the total net development costs of the properties sold during the portfolio reporting period. The amount of principal remittance would be calculated by subtracting 115 percent of total net development costs from actual cumulative sales for the portfolio reporting period, and prorating the result as a percentage of actual sales. The purchaser must remit a payment to the homebuyer's mortgage account for credit to the unpaid principal balance of the loan for the property. If the prorated reduction is less than $500, the purchaser may elect to make a cash payment directly to the eligible buyer. The balance in the escrow account after principal reductions on mortgages, if any, would be allocable to the purchaser. Distributions from the escrow account must be made by the purchaser no later than 90 days after its fiscal year end.

Table Four below illustrates the portfolio method in operation:

TABLE FOUR—SALES BY PURCHASER—PORTFOLIO METHOD

Property	115 percent of total net development cost	Total as-rehabilitated appraised value of properties	Maximum resale price allowed *	Escrow account deposit required **	Principal reduction required by purchaser
A	95,000.00	120,000.00	120,000.00	25,000.00	8,888.89
B	150,000.00	135,000.00	135,000.00	0.00	10,000.00
C	75,000.00	100,000.00	100,000.00	25,000.00	7,407.41
D	85,000.00	100,000.00	100,000.00	15,000.00	7,407.41
E	95,000.00	85,000.00	85,000.00	0.00	6,296.30
	500,000.00	540,000.00	540,000.00	65,000.00	40,000.00

Escrow Account Balance Distributed to Purchasers of Rehabilitated Properties: $540,000 − $500,000 = $40,000.
Escrow Account Balance Distributed to Purchaser: $65,000 − $40,000 = $25,000.
Estimated Gross Profit/Loss: {1 − [$500,000/(100%/115%) * $500,000]} = 15%.
* Actual resale price may be less than maximum resale price.
** The difference between actual sales price and 115% of net development cost for each transaction must be deposited in an escrow account. A principal reduction on applicable mortgages is required when cumulative actual sales are more than 115% of total net development costs of property sales for the program during the purchaser's fiscal year. The balance in the escrow account after required principal reductions on mortgages is allocable to the purchaser.

To better reflect market conditions, HUD may periodically propose to adjust the allowable percentage of net development cost and/or the portfolio reporting period. Such proposed adjustments shall be announced through publication of a notice in the **Federal Register** that will provide the public with the opportunity to comment for a period of at least 30 days. After the comments have been considered, HUD will publish a final notice announcing the adjustment and its effective date.

12. *Owner-Occupancy Term for Eligible Buyers.* An eligible buyer who purchases an asset property at below its appraised value would be required to own, and live in as his/her sole residence, the asset property for 36 months commencing upon the date of

closing on the purchase of the home. The owner-occupancy requirement is consistent with the statutory goal of promoting homeownership, and is being required in consideration of the discounted sales price to the eligible buyer. An eligible buyer who pays the full appraised market value for an asset property would therefore not be subject to the owner-occupancy requirements.

HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the eligible buyer submits a written and signed request to HUD containing the reasons why the interruption is necessary, the date of the intended interruption, and a certification from the eligible buyer affirming that the buyer will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

To ensure compliance with owner occupancy requirements, the sale of asset properties to eligible buyers shall be secured with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price. The term of the subordinate mortgage is equal to the owner-occupancy term (36 months). The amount of the subordinate mortgage will be reduced by 1/36th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the subordinate mortgage will be zero. If the eligible buyer sells the asset property or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage as of the date the property is either sold or vacated.

13. *Reporting Requirements and Compliance Reviews.* Section 291.665 of the proposed rule contains reporting requirements that purchasers under the program must fulfill. In addition to financial reports, purchasers that sell asset properties to eligible buyers must obtain and retain a certification that the buyer, in fact, meets the requirements of this regulation for eligible buyers. Proposed § 291.683 would provide for annual HUD compliance reviews. The section would require all purchasers and their partners and agents to cooperate with HUD's requests for information.

14. *Sanctions for Failure To Comply.* Section 291.675 of the proposed rule contains sanctions that HUD may take against purchasers or eligible buyers that commit an act of default as defined in the section, along with administrative appeal procedures. In addition to the listed sanctions, HUD has the right to take any other enforcement action permitted by law, including, but not limited to, suspension, debarment, and actions under the Program Fraud Civil Remedies Act.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
Agreement Process:					
Initial Application	3	1	3	80	240
Modification of Sale Agreement	6	1	6	10	60
Reporting:					
Monthly Report	15	12	180	3	540
Repair Report	15	25	375	3	1,125
Financial Statements	15	1	15	3	45
Performance Assessment:					
AUP Compliance Review	15	1	15	3	45
Maintenance Reports	3	12	36	1	36
Total	72				2,091

Total estimated burden hours: *2,091.*

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–4988) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building,

Washington, DC 20503, Fax: (202) 395–6947; and

Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted above in this preamble, the proposed rule would codify a statutorily established program to make HUD-held single family homes and mortgage assets available for sale to units of general local government and nonprofit entities. The goal of the program is to help revitalize certain distressed areas, with primary focus on the expansion of homeownership opportunities. Participation in the program is voluntary and, therefore, the proposed regulatory amendments would not impose any mandatory burdens on units of general local governments and nonprofit organizations. Rather, to the extent that the rule would impose any burden, it would be as a result of the jurisdiction or nonprofit organization making a determination that its participation in the program makes administrative and economic sense and aligns with its operational goals.

HUD has taken several steps to minimize burdens associated with voluntary participation in the program. For example, the proposed rule provides for financing assistance to homebuyers through the provision of FHA mortgage insurance, which will facilitate the sale of homes acquired under the program. Further, to the extent possible, the language of the proposed rule closely tracks the statutory program requirements. Where HUD has been compelled by statute or deemed it advisable to elaborate upon the statutory language, it has built upon the best practices observed in administration of the dozen ACA agreements that are successfully being implemented throughout the country.

These agreements have been entered into on a case-by-case basis under statutory authority. The participants reflect a broad geographic diversity (participants are located in the Northeast, Midwest, Southwest, and West) and size distribution (including large and small units of general local government and nonprofit community organizations). Accordingly, the best practices that would be codified by the proposed rule are reflective of market realities throughout the country and address the potential administrative issues that might be faced by a cross section of participants. For example, in response to situations where a preferred purchaser may be unable to recoup losses as a result of the acquisition and rehabilitation costs exceeding the fair market value of properties, the proposed rule permits program participants to calculate allowable sales prices on a portfolio-wide basis. Allowing differing calculations of sales price accommodates operational differences between program participants, including differences based on the size of the entities participating in the program. (For a more detailed discussion of sales price calculation under the proposed rule, please see Section II.11 of this preamble.)

Another example of the regulatory amendments conforming to best practices is the proposed discount structure for preferred purchasers. The proposed rule provides for discounts to preferred purchasers based on the appraised value of the asset. As discussed in detail in Section II.8 of this preamble, the discount structure HUD proposes to codify is largely based on the discounts currently being provided to program participants. The discounts are therefore based on data accumulated in administration of the current sale agreements, are familiar to program participants, and reflect the economic realities faced by preferred purchasers. Further, as noted, the discounts are based on the appraised value of properties in the locality, regardless of size, and therefore accommodate both large and small jurisdictions proportionate to local conditions.

For the above reasons, the undersigned has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

A Finding of No Significant Impact (FONSI) 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(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

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 on the private sector. This proposed rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.311.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for part 291 is revised to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*, 1710(h); Pub. L. 106–554; 42 U.S.C. 1441, 1441a, and 3535(d).

2. Add a new subpart G to read as follows:

Subpart G—Sale of Single Family Assets in Revitalization Areas

Sec.

291.600 Purpose.
291.605 Definitions.
291.610 Revitalization Areas.
291.615 Purchaser categories.
291.620 Application requirements.
291.625 HUD review and approval of application.
291.630 Sale Agreement requirements for Purchasers.
291.635 Asset Property condition requirements.
291.640 Discount classes for Preferred Purchasers.
291.645 Appraisal and pricing of Asset Properties that are real properties.
291.650 Conveyance of Eligible Assets.
291.655 HUD financing and assistance to Preferred Purchasers and their Partnerships.
291.660 Resale of assets to Eligible Buyers.
291.665 Reporting and disclosures.
291.670 Conflicts of interest.
291.675 Sanctions for failure to comply.
291.681 Termination for convenience of the government.
291.683 Audits and reviews.

§ 291.600 Purpose.

This subpart provides the regulations that govern a program under which sales of categories of eligible single family assets are carried out in a manner that promotes revitalization through the expansion of homeownership opportunities.

§ 291.605 Definitions.

Asset Control Area (ACA) means an area established by a Preferred Purchaser pursuant to § 291.615(b)(2).

Asset Property means:

(1) With respect to an eligible asset that is real property, such real property; and

(2) With respect to an eligible asset that is a mortgage, the property that is subject to the mortgage.

Eligible Asset means:

(1) In the case of real property, any property that:

(i) Is designed as a dwelling for occupancy by 1-to-4 families;

(ii) Is located in a Revitalization Area;

(iii) Was previously subject to a mortgage insured under the provisions of the National Housing Act (12 U.S.C. 1701 *et seq.*); and

(iv) Is owned by HUD pursuant to the payment of insurance benefits under the National Housing Act.

(2) In the case of mortgages, any mortgage that:

(i) Is an interest in a property that meets the requirements of paragraphs (1)(i) and (1)(ii) of this definition;

(ii) Was previously insured under Title II of the National Housing Act (12 U.S.C. 1707 *et seq.*) except for mortgages insured under or made pursuant to sections 235, 247, or 255 of the National Housing Act (12 U.S.C. 1715z, 1715z–12, or 1715z–20, respectively); and

(iii) Is held by HUD pursuant to the payment of insurance benefits.

(3) Notwithstanding paragraphs (1) and (2) of this definition, the term ''Eligible Asset'' does not include any real property (including real property securing a mortgage under paragraph (2) of this definition) where HUD has determined that it is economically or otherwise infeasible to rehabilitate the property or that the best use of the property is as open space, including as park land.

Eligible Buyer means a family (which can include a single person) that meets the following eligibility requirements to purchase properties made available under this subpart by the Preferred Purchaser or Non-Preferred Purchaser:

(1) Has an annual income of no more than 115 percent of area median income and agrees to reside in the property as the owner for three years from the date of closing of the sale; or

(2) Is or has a resident member who is a ''*teacher,*'' ''*police officer,*'' or ''*firefighter/emergency medical technician,*'' as defined under the Good Neighbor Next Door Sales Program codified in subpart F of this part.

Homeownership Plan means a plan, incorporated into the Sale Agreement, to which a Preferred Purchaser must agree under this subpart. A Homeownership Plan has as its primary purpose the expansion of homeownership in, and the revitalization of, the ACA in which the eligible asset is located, and must meet the requirements of this subpart and section 204 of the National Housing Act (12 U.S.C. 1710(h)).

Indian tribe means any Indian or Alaska Native tribe, band, nation, or other organized group or community of Indians or Alaska Natives recognized as eligible for the services provided to Indians or Alaska Natives by the Secretary of the Interior because of its status as such an entity, or that was an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

Net Development Cost means the sum of the acquisition costs of an Asset Property to the Purchaser, plus any rehabilitation costs required under § 291.635, closing, or holding costs.

Non-Preferred Purchaser means any Purchaser that is not a Preferred Purchaser, but which meets the requirements of § 291.615(c).

Partnership means, for the purpose of this subpart, joint participation under this subpart by two or more Preferred Purchasers; for example, by a nonprofit organization and a Unit of General Local Government.

Preferred Purchaser means a Unit of General Local Government, state, or Indian tribe having jurisdiction with respect to the area in which are located the Eligible Assets to be sold, or a nonprofit organization which:

(1) In the case of a nonprofit organization, is currently included on the nonprofit organization roster under 24 CFR 200.194 and has tax-exempt status as an organization under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c);

(2) Establishes an ACA; and

(3) Has the capacity to perform the duties required in § 291.615(b).

Purchaser means either a Preferred or Non-Preferred Purchaser, as defined in this section, but does not include Eligible Buyer(s), as defined in this section.

Revitalization Area means a geographic area designated by HUD under § 291.610.

Sale Agreement means a contract between HUD and a Preferred or Non-

Preferred Purchaser that contains the information required under § 291.630.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this subpart.

Unit of General Local Government means any city, town, township, county, parish, village, or other general purpose political subdivision of a state, and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subpart.

§ 291.610 Revitalization Areas.

(a) HUD shall designate areas as Revitalization Areas within which an ACA may be defined, in accordance with the terms and conditions provided in this subpart. Prior to designating an area as a Revitalization Area, HUD shall consult with affected Units of General Local Government, states, Indian tribes, and interested nonprofit organizations.

(b) The chief executive officer of a county or the government of appropriate jurisdiction may request that HUD designate as a Revitalization Area any or all portions within a jurisdiction that meet the criteria under paragraph (c) of this section. Such requests shall be submitted in a manner and form prescribed by HUD. Within 60 calendar days of receiving such a request, HUD will notify the requestor of its decision.

(c) HUD shall, in its discretion, designate as a Revitalization Area an area that meets at least one of the following requirements:

(1) *Very low-income area.* The median household income for the area is less than 60 percent of the median household income for:

(i) The metropolitan area in which the proposed Revitalization Area is located; or

(ii) The state in which the proposed area is located (if the proposed Revitalization Area is not located within a metropolitan area);

(2) *Disproportionately high concentration of Eligible Assets.* A high rate of default or foreclosure for single family mortgages insured under the National Housing Act has resulted, or may result in the area:

(i) Having a disproportionately high concentration of Eligible Assets, in comparison with the concentration in surrounding areas; or

(ii) Being detrimentally impacted by Eligible Assets in the vicinity of the area.

(3) *Low homeownership rate.* The rate for homeownership of single family homes in the proposed Revitalization Area, as measured by the proportion of owner-occupied housing units to occupied housing units, is substantially below the rate for homeownership in:

(i) The metropolitan area in which the Proposed Revitalization Area is located; or

(ii) The state in which the proposed area is located (if the Proposed Revitalization Area is not located within a metropolitan area);

(d)(1) HUD will review Revitalization Areas annually, and remove the designation of ''Revitalization Area'' from any geographical area that no longer meets the definition of a Revitalization Area. This removal will occur at the earliest opportunity, such as upon the expiration of the term of the then-current Sale Agreement.

(2) The removal of the designation of a Revitalization Area shall not modify the terms of a Sale Agreement in effect at the time such designation is removed. A geographic area designated as a Revitalization Area shall continue to be considered as such for purposes of the agreement until the expiration of the Sale Agreement.

§ 291.615 Purchaser categories.

(a) *Eligibility.* HUD may sell assets to Purchasers in accordance with the procedures provided in this subpart, so long as the Purchasers and any officers, directors, or principals participating with them are not debarred, suspended, subject to a limited denial of participation, or otherwise disqualified from participating in HUD programs.

(b) *Preferred Purchasers.* HUD shall sell Eligible Assets at a discount to Preferred Purchasers (including Partnerships thereof). A Preferred Purchaser must:

(1) Have the capacity to carry out the purchase of the category or categories of Eligible Assets stated in the Sale Agreement;

(2) Establish an ACA consisting of all or part of a Revitalization Area;

(3) Purchase all Eligible Assets in the category or categories identified in the Sale Agreement, up to the maximum number specified in the Sale Agreement or until the term of the Sale Agreement expires, whichever occurs first;

(4) Agree to specific performance goals as stated in the Sale Agreement under § 291.

(c) *Non-Preferred Purchasers.* Non-Preferred Purchasers are not eligible for discounts. Non-Preferred Purchasers must:

(1) Enter into a binding agreement in which the Purchaser agrees to meet specific performance goals established by HUD for homeownership of the asset properties for the Eligible Assets purchased by the Purchaser, except that HUD may, by including a provision in the Sale Agreement, provide for a lower rate of homeownership in sales involving exceptional circumstances. The Purchaser must also agree to rehabilitate each Asset Property purchased to comply with local building code standards; and

(2) Have the capacity to carry out the purchase of Eligible Assets under this subpart, as stated in the binding agreement under paragraph (c)(1) of this section.

(d) *Partnerships.* Preferred Purchasers, such as a Unit of General Local Government and a nonprofit organization, may form a Partnership to purchase Eligible Assets under this subpart. In such cases, each Preferred Purchaser must comply with all application requirements in § 291.620 and each shall be fully obligated under the Sale Agreement and Homeownership Plan.

§ 291.620 Application requirements.

(a) *Units of General Local Government.* Every Unit of General Local Government or Tribal Government that applies to participate under this subpart must submit to the appropriate Home Ownership Center (HOC) having jurisdiction over the assets to be sold:

(1) An official resolution of the Unit of General Local or Tribal Government, signed and dated by persons with actual authority as required by state, tribal, or local law, adopting the completed Sale Agreement and agreeing to perform all duties and obligations under the Sale Agreement and to not take actions that would interfere with its implementation; and

(2) The Name and Address Identifier (NAID) issued by HUD, if available, and Federal Employer Identification Number (EIN) for the applicant and any participating entities.

(b) *Nonprofit organizations.* Every nonprofit Purchaser that applies to participate under this subpart must be on the nonprofit roster under 24 CFR 200.194 and must submit:

(1) The Federal Employer Identification Number (EIN) for the applicant and any participating entities that will be involved in the applicant's program under this subpart and the Social Security Numbers (SSNs) of the principal staff of the applicant and its participating entities;

(2) A letter of endorsement from a Unit of General Local Government with jurisdiction over the entire proposed ACA signed by an authorizing official stating that the official has reviewed the Sale Agreement of the nonprofit organization and supports the nonprofit organization's role in carrying out the activities described in the Sale Agreement;

(3) An official resolution of the nonprofit organization, signed and dated by persons with actual authority as required by state, tribal, or local law and the organization's governing documents, adopting the completed Sale Agreement and agreeing to perform all duties and obligations under the Sale Agreement; and

(4) Evidence of tax-exempt status granted by the Internal Revenue Service under the tax-exempt organization provisions of section 501 of the Internal Revenue Code (26 U.S.C. 501 *et seq.*).

(c) *Application requirements applicable to both Units of General Local Government and nonprofit organizations.* In addition to the applicable application requirements identified in paragraphs (a) and (b) of this section, a Unit of General Local Government and nonprofit organization must also submit as part of its application:

(1) The Homeownership Plan to be incorporated into the Sale Agreement. The Homeownership Plan must contain, at a minimum, a map and description of the geographical boundaries of the ACA, a statement of the categories of assets to be sold, and a statement of the homeownership and neighborhood revitalization goals to be achieved by the plan.

(2) A certification that neither the Preferred Purchaser nor its officers, directors, or principals are suspended, debarred, subject to a limited denial of participation, or otherwise prohibited from participating in a federal program, subject to applicable penalties for false statements and perjury.

(d) *Non-Preferred Purchasers.* Every Non-Preferred Purchaser that applies under this subpart must submit required information to the appropriate HOC having jurisdiction over the assets to be sold. The information to be submitted is as follows:

(1) The Non-Preferred Purchaser's taxpayer identification number, which may be an SSN or an EIN;

(2) A statement indicating how the Non-Preferred Purchaser is organized (e.g., as a corporation, sole proprietorship, limited partnership, etc.);

(3) The Non-Preferred Purchaser's Data Universal Numbering System (DUNS) number;

(4) Articles of incorporation, by-laws, partnership agreements, or such other organizational and governing documents;

(5) A certificate of good standing from the jurisdiction in which the Non-Preferred Purchaser is incorporated or organized;

(6) A copy of the Non-Preferred Purchaser's valid business license and any professional licenses issued to the entity;

(7) A letter of endorsement from the Unit of General Local Government stating that it has reviewed the Non-Preferred Purchaser's proposed binding agreement under § 291.615(c) and supports the Non-Preferred Purchaser's role in carrying out the activities described in these documents, along with an organizational resolution from the entity evidencing: Authority to enter into the binding agreement, and that the entity has taken whatever steps are necessary to officially adopt, execute, and endorse these items;

(8) A listing of the names and addresses of members of the Board of Directors, chief officers (or other governing body), and principal staff of the Non-Preferred Purchaser;

(9) A certification that neither the Preferred Purchaser nor its officers, directors, or principals are suspended, debarred, subject to a limited denial of participation, or otherwise prohibited from participating in a federal program. Such certification is subject to applicable penalties for false statements and perjury; and

(10) A certification of the completeness and accuracy of all information contained in all documents under this section. Such certification is subject to applicable penalties for false claims, false statements, and perjury.

(e) *Preferred and Non-Preferred Purchasers.* In addition to the applicable application submission requirements described in paragraphs (a) through (d) of this section, all Purchasers must include the following information in their application submissions to the appropriate HOC:

(1) A description of the Purchaser's staff and organization, including:

(i) A list of all principal staff of the Purchaser, its officers, directors, and principals, including their position titles, and the resumes or biographies documenting each staff person's relevant housing development experience;

(ii) A description of contracts and partnership agreements into which the Purchaser has entered or plans to enter for the purpose of conducting activities under this subpart;

(iii) A statement identifying any participating entities that will assist with or be involved in a Purchaser's program under this subpart, including, but not limited to, down payment assistance providers, housing counseling agencies, contracting firms, marketing or sales agents, and entities offering special financing arrangements for buyers; and

(iv) A certification that the Purchaser's relationship with partners, contractors, and participating entities does not create any conflict-of-interest issues as provided in § 291.670;

(2) A statement of financial condition demonstrating the capacity of the Purchaser to carry out the proposed program under this subpart, including:

(i) A capitalization plan showing the amount of capitalization and the sources of available funds;

(ii) Liabilities, including all debts, liens, and judgments;

(iii) The Purchaser's current and last two year-end audited financial statements, if available; and

(iv) The Purchaser's current and last two year-end profit and loss statements and balance sheets, if available.

(3) Valid resolutions delegating signature authority as necessary to provide for the execution of any sales contracts or other documents on behalf of the Purchaser. These resolutions must be signed and dated by the appropriate persons under applicable state, tribal, or local law; and

(4) A certification, on official letterhead of the Purchaser, of the completeness and accuracy of all information contained in the application, subject to applicable penalties for false claims, false statements, and perjury.

§ 291.625 HUD review and approval of application.

(a) *Initial stage processing.* Each application will be reviewed by HUD. If the application is complete, the application will be reviewed under the procedures established by this subpart. If the application is incomplete, HUD will inform the applicant in writing and provide an opportunity to submit any missing material within 30 days of the date of the written communication informing the applicant of the incompleteness.

(b) *Review of application.* (1) Each application will be reviewed on a first-come, first-served basis by the date and time of HUD's receipt of the application, if the application complies with the requirements of this subpart, except that if HUD receives an application from a

Preferred Purchaser and from a Non-Preferred Purchaser for the same geographic area on the same date, HUD will consider the application from the Preferred Purchaser to be the prior received application. The decision regarding when an application was received is solely within HUD's discretion.

(2) HUD's threshold criteria will include, at a minimum, the following:

(i) If the application submitted is incomplete and HUD notifies the applicant in writing as provided in paragraph (a) of this section, the application will be considered submitted on the date and time that HUD receives the materials necessary to complete the application. All members of a Partnership must each submit all required application materials. HUD's decision as to whether or not an application is complete is solely within HUD's discretion;

(ii) Status as a Preferred Purchaser or Partnership if the applicant or applicants is seeking the preference and discounts available to Preferred Purchasers;

(iii) No employee, officer, or agent of the applicant has engaged in activities that involve a real or apparent conflict of interest under § 291.670;

(iv) Eligibility of the personnel to participate in HUD programs;

(v) A methodology to provide homeownership opportunities to underserved populations, including persons with disabilities; and

(vi) Demonstrated legal, administrative, and financial capacity to successfully fulfill the requirements of the Sale Agreement and, in the case of a Preferred Purchaser, the requirements of the Homeownership Plan.

(c) *Application approval.* (1) HUD will enter into a Sale Agreement (which, for a Preferred Purchaser, must incorporate the Homeownership Plan) with each applicant or with each member of a Partnership as provided in § 291.630, once HUD approves, in its discretion, the first complete application it receives that meets the threshold requirements under paragraph (b) of this section. If no applications meet the threshold requirements or HUD approves no application, HUD will not enter into a Sale Agreement.

(2) If an approved ACA includes less than the total Revitalization Area, or if the category of Eligible Assets to be sold includes less than all HUD-held assets in an ACA or Revitalization Area, or if an approved application from a Non-Preferred Purchaser includes fewer than all the assets in a Revitalization Area, the remaining assets (i.e., those not covered in the application) in a Revitalization Area may be sold as provided elsewhere in this part.

§ 291.630 Sale Agreement requirements for Purchasers.

Every Purchaser, and each member of a Partnership that applies to participate under this subpart, as a condition of participation, enters into a Sale Agreement, which must contain:

(a) In the case of Preferred Purchasers:

(1) The goals of the Homeownership Plan for the Eligible Assets purchased and for the ACA subject to the Homeownership Plan;

(2) The Revitalization Areas (or portions thereof) and ACAs in which the Homeownership Plan is operating or will operate, including geographic descriptions and maps;

(3) The specific use or disposition of the Eligible Assets under the Homeownership Plan;

(4) Any activities to be conducted and services to be provided under the Homeownership Plan; and

(5) Goals for the acquisition, management, and resale of the respective HUD-owned assets already in HUD's inventory or to be acquired during the time frame of the Sale Agreement.

(b) In the case of both Preferred and Non-Preferred Purchasers:

(1) A home buyer selection process that includes the requirements for Eligible Buyers and methods to fairly and equitably provide opportunities for Eligible Buyers, in accordance with the Fair Housing Act (42 U.S.C. 3601 *et seq.*), and nondiscrimination requirements of 24 CFR 5.105;

(2) A description of the housing counseling opportunities that will be available to Eligible Buyers;

(3) A description of the Purchaser's accounting systems that will clearly enable the Purchaser to ensure that funds associated with activities under this subpart are not commingled with other funds for programs administered by the Purchaser;

(4) An operating plan that includes:

(i) The acquisition schedule that describes an agreed timeline for concluding individual asset sales to the Purchaser; and

(ii) The rehabilitation standard for the asset properties, which must comply with local building code standards under § 291.635;

(5) A certification from the Purchaser that it will comply with the performance goals contained in the Sale Agreement; and

(6) A certification that the Purchaser, its officers, directors, and principals are not subject to suspension, debarment, limited denial of participation, and are not otherwise prohibited from participating in a federal program, subject to applicable penalties for false statements and perjury.

§ 291.635 Asset Property condition requirements.

All Asset Properties purchased under this subpart must meet, or be rehabilitated to meet, local building code standards.

§ 291.640 Discount classes for Preferred Purchasers.

(a) *Three discount classes.* Eligible Assets will be priced according to one of three discounts, based on the relationship of the appraised value to the dollar cost of the eligible repairs, as follows:

(b) *Fifty percent discount.* Eligible Assets with an appraised value of $50,000 or greater shall receive a discount of 50 percent of the appraised value of the property.

(c) *$24,900 discount.* Eligible Assets with an appraised value of greater than $25,000, but less than $50,000, shall receive a discount of $24,900 from the appraised value of the property.

(d) *Maximum Discount.* Eligible Assets with an appraised value of $25,000 or less will have a purchase price of $100.

§ 291.645 Appraisal and pricing of Asset Properties that are real properties.

(a) *Appraisal of Asset Properties.* HUD will order an appraisal by an appraiser on the Federal Housing Administration (FHA) appraiser roster under 24 CFR part 200, subpart G, for each Asset Property in the ACA to be sold. The property will be appraised based on the market value of the property in ''as-is'' physical condition. If the property was appraised by an appraiser from the FHA appraiser roster within the previous calendar year, the property need not be reappraised, unless the Purchaser requests a reappraisal or disputes the appraised value under paragraph (b) of this section.

(b) *Resolving disputes about appraised value.* If the Purchaser disputes the initial appraisal, it may request a second appraisal from HUD. In such cases, the second appraisal will be used to determine the current appraised value. The Purchaser may request an individual new appraisal if the request is made prior to sale and the Purchaser demonstrates, in HUD's sole discretion, a reasonable likelihood that a second appraisal would indicate a value that differs by 20 percent or more, higher or lower, from the original appraisal. HUD will retain services of one of the appraisers on the FHA appraiser roster to review the original appraisal and

perform a new appraisal. Additional costs for any new appraisals will be borne by the Purchaser, unless the new appraisal indicates a value that differs by 20 percent or more, higher or lower, from the original appraisal.

(c) *Pricing Eligible Assets.* If there is one appraisal, the price to the Purchaser will be calculated by applying the appropriate discount under § 291.640 to the appraised value. If HUD approves additional appraisals under paragraph (b) of this section and such appraisals result in a change in value, the price will be calculated by applying the appropriate discount under § 291.640 to the final approved appraised value.

§ 291.650 Conveyance of Eligible Assets.

(a) *Eligible Assets initially available in the ACA or Revitalization Area.* Prior to entering into the Sale Agreement, HUD will identify all the categories of Eligible Assets along with the Eligible Assets available in those categories within the proposed ACA (in the case of a Preferred Purchaser) or Revitalization Area (in the case of a Non-Preferred Purchaser) and provide this information in a ''designation notice'' to the Purchaser. The Purchaser or Partnership, after reviewing the designation notice, will present an acquisition schedule to HUD for review. HUD will review the acquisition schedule along with the Purchaser or Partnership's capacity and the units to determine whether to approve the acquisition schedule as is, or to approve it with modifications.

(b) *Assets acquired during the life of the Sale Agreement.* (1) As HUD acquires and makes available new Eligible Assets in the ACA during the life of the Sale Agreement, HUD will provide official notification of availability of these assets to the Preferred Purchaser or Partnership.

(2) As HUD acquires and makes available new Eligible Assets in the Revitalization Area during the life of the Sale Agreement, HUD will provide official notification of availability of the assets to the Non-Preferred Purchaser.

(3) Within 5 days after receiving the official notification from HUD, the Preferred Purchaser or Partnership shall complete and submit a report to HUD stating the repairs required for each Asset Property in the ACA to meet the property condition standards in § 291.635.

(4) HUD will apply the appropriate level of discount pursuant to § 291.640 and, within 15 days of the date of initial notification from HUD, notify the Preferred Purchaser or Partnership of the sale price and provide the Preferred Purchaser with a copy of the appraisal report.

(c) *Closing of sales.* Sales will be closed according to the terms of the Sale Agreement under this section and specific closing procedures specified by HUD.

(d) *Subordinate lien.* HUD shall secure the sale of Asset Properties (including HUD-financed sales under § 291.655) with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price. HUD shall release the subordination upon compliance of the provisions of the Sale Agreement and sale of the Asset Property to an Eligible Buyer pursuant to § 291.660.

§ 291.655 HUD financing and assistance to Preferred Purchasers and their Partnerships.

(a) HUD may offer 100 percent financing to Units of General Local Government, states, Indian tribes, and nonprofit organizations on the purchase of Eligible Assets for up to 180 days from the date of closing, subject to the availability of appropriations. Such financing will be interest-free for the first 89 days from the date of closing, and at market rate commencing with the 90th day until the end of the loan or the 180th day from the date of closing, whichever occurs first.

(b) *Payment date.* When using the methods in paragraph (a) of this section, the Purchaser must pay the full amount for the asset and any accrued interest on the earlier of two dates:

(1) The date after the resale of the asset to the ultimate buyer; or

(2) The expiration date of the loan.

(c) *$5,000 threshold.* Notwithstanding paragraphs (a) and (b) of this section, the Purchaser must pay the full amount at closing for Eligible Assets sold for less than $5,000.

(d) *Delinquent loans.* In the case of delinquent HUD-financed loans under this section, HUD has the right to take legal action to recover the property or enforce the borrower's payment obligations.

(e) *Non-Preferred Purchasers.* HUD will not offer financing to Non-Preferred Purchasers.

§ 291.660 Resale of assets to Eligible Buyers.

(a) *General.* Resale of Asset Properties by Purchasers to Eligible Buyers as defined in § 291.605 must take place in accordance with the goals and timetables submitted to HUD as part of the Homeownership Plan and the Sale Agreement. Resale of mortgages under this subpart must promote homeownership opportunities.

(b) *Sales price*—(1) *Two methods for determining sales price.* The Purchaser may elect to establish the sales price of Asset Properties to Eligible Buyers using either an individual transaction method or a portfolio-wide method.

(2) *Transaction method for determining sales price.* Under the transaction method, the sales price of an Asset Property to an Eligible Buyer may not exceed the lesser of:

(i) The as-rehabilitated appraised value of the Asset Property; or

(ii) The HUD-established percentage of the Net Development Cost (see paragraph (b)(4) of this section).

(3) *Portfolio method for determining sales price.* Under the portfolio method, the cumulative sales prices of Asset Properties sold to Eligible Buyers during the Purchaser's ''portfolio reporting period'' (see paragraph (b)(4) of this section) may not exceed the lesser of:

(i) The total as-rehabilitated appraised value of the asset properties; or

(ii) The HUD-established percentage of the total Net Development Cost for those properties (see paragraph (b)(4) of this section).

(4) *HUD-established percentage of Net Development Cost and portfolio reporting period.* (i) Initially, HUD establishes the allowable percentage of Net Development Cost under paragraphs (b)(2) and (b)(3) of this section at 115 percent. The portfolio reporting period described in paragraph (b)(3) of this section is a 12-month period covered by the Sale Agreement, generally commencing on the date of the Sale Agreement's execution or anniversary thereof.

(ii) To better reflect market conditions, HUD may periodically propose to adjust the allowable percentage of Net Development Cost and/or the portfolio reporting period. Such proposed adjustments shall be announced through publication of a notice in the **Federal Register** that will provide the public with the opportunity to comment for a period of at least 30 days. After the comments have been considered, HUD will publish a final notice announcing the adjustment and its effective date.

(5) *Sale method election.* Use of the portfolio method is optional. During each portfolio reporting period, a Purchaser may elect either the portfolio method or the transaction method; however, the Purchaser may not use both methods concurrently and may not change methods during a portfolio reporting period.

(c) *Escrow and principal reduction requirements for Purchasers using portfolio method.*

(1) A Purchaser electing the portfolio option must deposit into an escrow account the difference between the actual sales price and the HUD-established percentage of the Net Development Cost for each transaction.

(2) The purchaser must reduce the principal on each mortgage when cumulative actual sales are more than 115 percent of the total Net Development Costs of the properties sold during the portfolio reporting period. The amount of principal reduction is calculated by subtracting the HUD-established percentage of total Net Development Costs from actual cumulative sales for the portfolio reporting period, and prorating the result as a percentage of actual sales. The balance in the escrow account after principal reductions on mortgages, if any, is allocable to the Purchaser. Distributions from the escrow account must be made by the Purchaser no later than 90 days after its fiscal year end.

(d) *Owner-occupancy term.* (1) An Eligible Buyer who purchases an Asset Property at below its as-rehabilitated appraised value must comply with the owner-occupancy requirements described in this paragraph. An Eligible Buyer who purchases an Asset Property for the as-rehabilitated appraised value is not subject to the owner-occupancy requirements.

(2) The owner-occupancy term is the number of months that an Eligible Buyer must agree to own, and live in as his/her sole residence, an Asset Property purchased under this part. The owner-occupancy term is 36 months commencing on the date of closing.

(3) HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the Eligible Buyer submits a written and signed request to HUD containing the following information:

(i) The reason(s) why the interruption is necessary;

(ii) The dates of the intended interruption; and

(iii) A certification from the Eligible Buyer that the Eligible Buyer is not abandoning the Asset Property as his/her permanent residence and will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

(4) The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

(e) *Subordinate mortgage.* (1) For purposes of ensuring compliance with owner occupancy requirements, HUD shall secure the sale of Asset Properties (including HUD-financed sales under § 291.655) to Eligible Buyers with a subordinate mortgage in the amount of the difference between the appraised value of the Asset Property and the sales price.

(2) The term of the subordinate mortgage is equal to the owner-occupancy term (36 months). The amount of the subordinate mortgage will be reduced by 1/36th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the subordinate mortgage will be zero.

(3) If the Eligible Buyer sells his/her home or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage as of the date the property is either sold or vacated.

§ 291.665 Reporting and disclosures.

(a) *Reporting to HUD.* Purchasers must complete a repair report with the initial cost estimate for each Asset Property repaired, along with the actual expenditures for repair and supporting documentation for those expenditures. Purchasers must retain this report for the term of the Sale Agreement plus 24 months, and make such reports available for inspection by HUD.

(b) *Disclosure to Eligible Buyer on resale.* Upon the resale of each Asset Property, the Purchaser must provide to the Eligible Buyer a disclosure notice containing an itemized list of all rehabilitation work that the Purchaser has performed or contracted out to be performed on each Asset Property being sold. At closing, the Purchaser must also provide the Eligible Buyer with a one-year homeowner's warranty, covering and warranting the rehabilitation work for one year.

(c) *Obligation to ensure eligibility.* The Eligible Buyer must certify to the Purchaser that he or she is eligible under this subpart. The Eligible Buyer must certify that he or she has an annual income of no more than 115 percent of area median income and agrees to reside in the property as the owner for 3 years from the date of closing of the sale; or that he or she has a resident member who is a teacher, police officer, firefighter, or emergency medical technician. The Purchaser must retain this certification as long as the Purchaser participates in the program under this subpart and provide it to HUD upon request.

(d) *Financial statements.* Purchasers must submit annual audited financial statements to HUD or HUD's designee. All Preferred Purchasers shall comply with the Single Audit Act Amendments of 1996 and, as applicable, OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(e) *Other reports.* Purchasers under this subpart must comply with any other annual, quarterly, and monthly reporting requirements as HUD may establish from time to time.

§ 291.670 Conflicts of interest.

(a) No employee, officer, or agent of a Preferred Purchaser under this subpart shall engage in activities that would involve a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial or other interest in any contractor, firm, or other persons or entities selected to rehabilitate, sell, purchase, act as a real estate agent, or otherwise participate in the acquisition, financing, rehabilitation, management, marketing, and sale of Eligible Assets under this subpart. This section does not apply when the Preferred Purchaser itself engages in any of these activities. Preferred Purchasers that receive discounts in the purchase price of assets under this subpart (as well as other federal assistance, such as financing) must comply with the conflict-of-interest provisions of this paragraph and 24 CFR parts 84 and 85, as applicable.

(b) The officers, agents, and employees of Preferred Purchasers under this subpart shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub-agreements, absent an exception for unsolicited items of nominal value granted by HUD.

(c) A Preferred Purchaser may not sell an Asset Property to an Eligible Buyer with whom the Purchaser has a business or close familial relationship, unless HUD provides a specific exception. HUD may provide such an exception under the following conditions:

(1) The Preferred Purchaser has disclosed the nature of the conflict to HUD, accompanied by an assurance that there was a public disclosure of the

conflict and a description of how the disclosure was made;

(2) The Preferred Purchaser's attorney has provided a signed opinion that the conflict for which the exception is sought would not violate state, tribal, or local law;

(3) The Preferred Purchaser makes a written showing that the conflict will not result in any influence on the discount, amount of rehabilitation, or price of an asset to the Eligible Buyer; and

(4) The proposed buyer meets the definition of Eligible Buyer in § 291.605 of this subpart.

§ 291.675 Sanctions for failure to comply.

(a) HUD may impose sanctions against a Purchaser or Eligible Buyer who commits an act of default as defined herein. An act of default is:

(1) A material violation of this subpart;

(2) A material violation of the Sale Agreement or the Homeownership Plan; or

(3) Any act of fraud or any false statements committed by a party during its participation in the activities described in this subpart.

(b) Sanctions may include:

(1) Termination of the Purchasers' rights under the Sale Agreement, including, without limitation, HUD's obligation to sell any asset properties to Purchaser; and

(2) Termination of approval of a Preferred Purchaser or Non-Preferred Purchaser to participate under this subpart.

(c) HUD has the right to take any other enforcement action permitted by law, including, but not limited to, suspension, debarment, and actions under the Program Fraud Civil Remedies Act.

(d)(1) HUD shall provide a program participant with written notice of its intent to pursue a sanction under paragraph (b) of this section. The notice will include the reasons for the proposed sanction.

(2) The program participant will have 20 days from the date of the notice to submit a written response appealing the proposed sanction and to request a conference. A request for a conference must be in writing and must be submitted along with the written response.

(3) Within 30 days of receiving the written response or, if the program participant has requested a conference, within 30 days after completion of the conference, a HUD official designated by the Secretary will review the appeal and provide the program participant with a written final decision either affirming, modifying, or cancelling the proposed sanction. HUD may extend this time by providing the program participant with notice. The HUD official designated by the Secretary to review the appeal will not be someone involved in the original decision or someone who reports to a person involved in that initial decision. In all such cases, the decision on such appeal is a final agency action.

§ 291.681 Termination for convenience of the government.

In addition to termination under § 291.675, the Sale Agreement may be terminated at any time for the convenience of the government.

§ 291.683 Audits and reviews.

HUD will conduct compliance reviews of each Purchaser under this subpart on an annual basis or such other time as HUD determines. Purchasers and their partners and agents shall comply with all requests for information regarding their activities under this subpart.

Dated: November 6, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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December 22, 2008

Part VII

Department of Health and Human Services

Indian Health Service

Native American Research Centers for Health (NARCH) Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Native American Research Centers for Health (NARCH) Grants

Announcement Type: New and Competing Continuations.

Funding Announcement Number: HHS–2010–IHS–NARCHVI–0001.

Catalog of Federal Domestic Assistance Numbers (s): 93.933.

Key Dates: Letter of Intent Deadline: March 15, 2009.

Application Deadline Date: May 14, 2009.

Review Date: October, 2009.

Earliest Anticipated Start Date: June 1, 2010.

I. Funding Opportunity Description

The Indian Health Service (IHS), in conjunction with the National Institute of General Medical Sciences (NIGMS) and other institutes of the National Institutes of Health (NIH) announces competitive grant applications for Native American Research Centers for Health (NARCH), an initiative to support new and/or continuing centers or projects funded under the NARCH grant program. This funding mechanism will develop further opportunities for conducting research and research training to meet the needs of American Indian/Alaska Native (AI/AN) communities. This program is authorized under the Snyder Act, 25 U.S.C. 13, the Public Health Service Act, 42 U.S.C. 241 as amended, and the Indian Health Care Improvement Act, 25 U.S.C. 1602(a)(b)(16). This program is described at 93.933 in the Catalog of Federal Domestic Assistance.

Background Information:

The AI/AN Tribal nations and communities have long experienced health status worse than that of other Americans. Although major gains in reducing health disparities were made during the last half of the twentieth century, most gains stopped by the mid-1980s (Trends in Indian Health 1998–99) and a few diseases, e.g., diabetes, worsened. ''All Indian'' rates contain marked variation among the IHS Areas or regions (Regional Differences in Indian Health 1998–99); and variation by Tribe exists within Areas as well. The Trends and Regional Differences reference can be found at the IHS Web site at: *http://www.ihs.gov/NonMedicalPrograms/IHS_Stats*. Although the AI/AN mortality rates for all cancers are about 20 percent lower than the U.S. rates for all races, there is variation among IHS Areas for specific cancers. Moreover, the favorable AI/AN mortality rates for some cancers may be due to markedly lower incidence rates partly offset by higher case-fatality rates. Unfamiliarity with modern health care may adversely influence health status among the elderly, the low-income elderly, and Tribes, and also may reduce the acceptability of health research among them. The daunting tasks confronting Tribes, researchers, and health care and public health programs in the beginning of the twenty-first century are to resume the reduction of health disparities that had occurred through the 1980s, to reverse the worsening in a few diseases, to maintain and strengthen the favorable status, and to reduce the disparities among and within Areas and Tribes. Factors known to contribute to health status and disparities are complex, and include underlying biology, physiology, and genetics, as well as ethnicity, culture, socioeconomic status, gender/sex, age, geographical access to care, and levels of insurance.

Additional factors known to contribute to health status and disparities include:

1. Family, home, and work environments;
2. General or culturally specific health practices;
3. Social support systems;
4. Lack of access to culturally appropriate health care; and
5. Attitudes toward health.

Yet none of these alone, or in combination, accounts for all documented differences. Health disparities of AI/ANs may also reflect a lack of in-depth research relevant to improving their health status. Many AI/ANs distrust research for historical reasons. One approach that combats this distrust is to ensure that Tribes are the managing partners in training and research that involves them, as for example, in community-based participatory research (i.e., a collaborative research process between researchers and community representatives). This approach is especially helpful to design both training relevant to researchers from Tribal communities, and research relevant to the health needs of the communities.

Research Objectives:

The NARCH initiative will support partnerships between Federally recognized AI/AN Tribes or Tribal organizations (including national and area Indian health boards, and Tribal colleges meeting the definition of a Tribal organization as defined by 25 U.S.C. 1603(d) or (e)) and institutions that conduct intensive academic-level biomedical, behavioral and health services research. These partnerships are called Native American Research Centers for Health (NARCH). Due to the complexity of factors contributing to the health and disease of AI/ANs, and to their health disparities compared with other Americans, the collaborative efforts of the agencies of the Department of Health and Human Services (HHS) and the collaboration of researchers and AI/AN communities are needed to achieve significant improvements in the health status of AI/AN people. To accomplish this goal, in addition to objectives set by the Tribe, Tribal organization or Indian health boards, the IHS NARCH program will pursue the following program objectives:

- To develop a cadre of AI/AN scientists and health professionals—Opportunities are needed to develop more AI/AN scientists and health professionals engaged in research, and to conduct biomedical, clinical, behavioral and health services research that is responsive to the needs of the AI/AN community and the goals of this initiative. Faculty/researchers and students at each proposed NARCH will develop investigator-initiated, scientifically meritorious research projects, including pilot research projects, and will be supported through science education projects designed to increase the numbers of, and to improve the research skills of, AI/AN investigators and investigators involved with AI/ANs.
- To enhance partnerships and reduce distrust of research by AI/AN communities—Recent community-based participatory research suggests that AI/AN communities can work collaboratively in partnership with health researchers to further the research needs of AI/ANs. Fully utilizing all cultural and scientific knowledge, strengths, and competencies, such partnerships can lead to better understanding of the biological, genetic, behavioral, psychological, cultural, social, and economic factors either promoting or hindering improved health status of AI/ANs, and generate the development and evaluation of interventions to improve their health status. Community distrust of research and researchers will be reduced by offering the Tribe greater control over the research process.
- To reduce health disparities—In the Indian Health Care Improvement Act, Public Law 94–437 (as amended), IHS was legislatively mandated to improve the delivery of effective health care to AI/ANs. In the NIH Revitalization Act of 1993, NIH was encouraged to increase

the number of under-represented minorities participating in biomedical, clinical, and behavioral research, including studies on drug abuse and alcoholism, and the examination of the role of resiliency in the prevention and treatment of those conditions. Also, the ''Initiative to Eliminate Racial and Ethnic Disparities in Health'' by HHS (*http://www.omhrc.gov/rah*) encouraged NIH to help reduce health disparities. In response to these priorities, the IHS and NIH have established a collaboration to support the NARCH.

Reducing health disparities among AI/AN communities and individuals may be fostered by greater understanding of how to enhance their strengths and resilience. While AI/AN communities have relied on health research and medical science to reduce health disparities, they have also relied on their own psychological, organizational, and cultural assets and strengths to survive major harms and disruptions over the centuries, and to rebound from insults to health.

The mission of NIH is to acquire new knowledge that will lead to better health by understanding the processes underlying health and disease that in turn will help prevent, detect, diagnose, and treat disease and disability. The NARCH initiative works toward the NIH mission by supporting research that discovers the interrelationships among the many factors that contribute to health and disease, and by helping to train and promote AI/AN researchers and researchers concerned with AI/AN health.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The estimated funds (total costs) available for the first year of support for the entire initiative is expected to be at least $2.0 million in Fiscal Year 2010. The actual amount may vary, depending on the response to the request for applications (RFA) and availability of funds. An applicant may request a project period not to exceed four years of support, and direct costs not to exceed $1,100,000 per center or $550,000 per project (research or training) in the first year of each award. Direct costs to the applicant include the total cost of each subcontract (subcontractor direct plus subcontractor indirect costs).

Anticipated Number of Awards: An estimated five to fifteen awards will be made under the program.

Award Amount: $100,000–$1,100,000 per year.

III. Eligibility Information

The new or existing NARCH must be a working partnership of the eligible AI/AN organization and of the research-intensive institution. Applicants eligible to receive the NARCH award are Federally recognized Tribes and Tribal organizations as defined under the Indian Health Care Improvement Act, 25 U.S.C. 1603 (d) or (e), including eligible Indian health boards or Tribal colleges applying on behalf of eligible Federally recognized Tribes or Tribal organizations. As the grantee, the eligible AI/AN organization will define criteria and eligibility for participation in all aspects of the partnership, consistent with this announcement. A minimum of 30 percent of the grant funds must be budgeted in the application to remain with the eligible AI/AN organization(s); that is, no more than 70 percent of the application's total budget may be contained in subcontract budgets of the non-eligible subcontracting partner institutions or organizations.

1. Eligible Applicants—The AI/AN applicant must be one of the following:

- A federally recognized AI/AN Tribe, as defined under 25 U.S.C. 1603(d); or
- A Tribal organization, as defined under 25 U.S.C. 1603(e), including Tribal colleges or health boards meeting this definition; or
- A consortium of two or more of those Tribes or Tribal organizations. Applicants other than Tribes must provide proof of non-profit status.

2. Cost Sharing or Matching—The NARCH program does not require matching funds or cost sharing.

3. The Research-Intensive Partner—The Research-Intensive Partner must be an accredited public or private nonprofit university, academic medical center, or other institution that has an established record of conducting research into the health problems of AI/AN; has demonstrated a commitment to enhancing the capability of AI/AN faculty/researchers, students, investigators, and communities to engage in biomedical, behavioral, clinical and health services research; and has demonstrated a commitment to mentoring AI/AN faculty/researchers, students, and investigators.

4. Principal Investigator—The Principal Investigator, the individual responsible for the administration (including fiscal management) of the overall project, must have his/her primary appointment with the AI/AN applicant organization. Special arrangements of employment, such as inter-organizational personnel agreements, are permissible. The Principal Investigator may be, but is not required to be, the NARCH Program Director or a Research Project Investigator. The NARCH Principal Investigator may or may not have formal academic/research credentials, but if not, then the NARCH Program Director must be so qualified.

The traditional NIH research project grant consists of a single Principal Investigator (PI) working with a small group of subordinates on an independent research project. Although this model clearly continues to work well and encourages creativity and productivity, it does not always work well for multidisciplinary efforts and collaboration. Increasingly, health-related research involves teams that vary in terms of size, hierarchy, location of participants, goals, disciplines, and structure. There is growing consensus that team science would be encouraged if more than one PI could be recognized on individual awards. The NIH has adopted a multiple-PI model, as recently directed by the Office of Science and Technology Policy. All agencies that have research and research-related programs must offer the multiple-PI model as an option. Note, it is only an option, not a requirement. The traditional NARCH division of roles between PI and Project Director will usually address these issues to a satisfactory degree. For additional information regarding the new multiple-PI model, please click on the following website: *http://grants.nih.gov/grants/multi_pi/index.htm*.

5. NARCH Program Director—The NARCH Program Director is the individual responsible for the day-to-day leadership and management of the research and training programs within the proposed NARCH. The Program Director may be, but is not required to be, the Student and Faculty/Researcher Development Director or a Research Project Investigator. The NARCH Program Director may or may not have formal academic/research credentials, but if not, then the Principal Investigator must be so qualified.

6. Student and Faculty/Researcher Development Director and Participant—The NARCH initiative is an institutional developmental grant mechanism that places an emphasis on the continual development of students and faculty/researchers. If a new Student and/or Faculty/Researcher Development Program is proposed in the current application, then the Principal Investigator of that project is expected to be the NARCH Student and Faculty Development Director. In order to be included as the Student and Faculty

Development Director, the prospective director must have a faculty/researcher appointment at the research-intensive institution (or equivalent appointment at the AI/AN organization or other consortium partner) and must demonstrate that he/she has the knowledge, skills, and capabilities to mentor students and faculty/researchers and to generate and direct development and mentoring programs.

The Student and Faculty Development Director may be the NARCH Program Director. Faculty/researchers and students should be supported in research education activities that improve their skills and abilities to be successful at the next stage of their professional development. To be included as a participant for faculty/researcher development in the proposed NARCH, the individual must have a faculty/researcher appointment at the research-intensive institution or equivalent appointment at the AI/AN organization or consortium partner.

7. Research Project Investigators—The NARCH initiative is an institutional developmental grant mechanism that places an emphasis on continual improvement of the research competitiveness of the research investigators. In order to be included as a research project investigator in the NARCH, a prospective investigator must have a faculty appointment at the research-intensive institution or equivalent appointment at the AI/AN organization or other consortium partner, and must show that he/she has the need, based on institutional, departmental, and professional development plans, to enhance his/her research knowledge, skills, and capabilities by engaging in the proposed research program and associated activities.

8. Tribal Approval of the Application—It is the policy of the IHS that all research involving AI/AN Tribes be approved by the Tribal governments with jurisdiction. Therefore, the following documentation is required as part of the application for new or continuing centers or additional NARCH projects:

- Tribal Resolution:

If the applicant is an Indian Tribe or Tribal organization, a resolution supporting the project from the Tribal government of all Tribes to be served must accompany the application submission. Applications by Tribal organizations will not require resolutions if the current Tribal resolutions under which they operate would encompass the proposed activities. In this instance, a copy of the current resolution must accompany the application. The listed Tribes to be served by the project in the proposal must match the set of appended resolutions. If a resolution from an appropriate representative of each Tribe to be served is not submitted prior to October 1, 2009, the application will be considered incomplete and will not be considered for funding.

An official signed resolution must be received by October 1, 2009 by the Division of Grants Operations (DGO), IHS, at the Reyes Building, 801 Thompson Avenue, TMP 360, Rockville, MD 20852. A grant will not be awarded unless the signed resolution is received. Please include the funding opportunity number, as a reference to this announcement, if the resolutions are submitted as a separate mailing.

9. Mechanism of Support—Awards under this initiative will be administered using the competing institutional grant mechanism of the IHS, and will be reviewed using the NIH S06 mechanism.

IV. Application and Submission Information

1. Address to Request Application Package: NARCH Program Official, Reyes Building, 801 Thompson Avenue, Rockville, MD 20852 or by e-mail to *narch@ihs.gov.* Applicants are strongly encouraged to establish eligibility of their proposed applications prior to submission. Inquiries about eligibility should be addressed to Alan Trachtenberg, M.D., M.P.H., at (301) 443–0578 or by e-mail to *narch@ihs.gov.* The application package, including supplemental instructions will be posted on the IHS Research Program Web site, at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.* Technical assistance will be made available for applicants, and first time applicants are urged to take advantage of it. To sign up for technical assistance, potential applicants should e-mail their contact information to *narch@ihs.gov* with the words ''technical assistance'' in the subject heading and full contact information, including email address, listed in the body of the e-mail.

The NIH instructions for the PHS 398 application form are available in an interactive format at: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* Applicants must use the currently approved version of the PHS 398. For further assistance contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov,* Telecommunications for the hearing impaired: TTY 301–451–0088.

Submit a typed and signed original application, including the Checklist, and one (1) single-sided photocopy of the entire application (including Appendices and supporting documents) in one package to: Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP 360, Rockville, MD 20852–1627 (zip code is unchanged for express/courier services), Telephone: (301) 443–5204.

''Native American Research Centers for Health'' and the RFA number NOT-GM–09–010 must be typed on line 2 of the face page of the application form and the YES box must be marked.

At the time of submission, applicants must also send four (4) additional single-sided photocopied and signed applications, including the Checklist, Appendices, and supporting documentation to: Center for Scientific Review (CSR), National Institutes of Health, 6701 Rockledge Drive, Room 6160—MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). Telephone: (301) 435–0715. The CSR no longer accepts hand delivered applications. E-mail or other electronic applications will not be accepted under this announcement.

Specific supplementary instructions for the PHS 398 application and budget preparation for the NARCH program may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.* They will also be sent to any potential applicant who e-mailed their contact information to *narch@ihs.gov* with the words ''technical assistance'' in the subject heading.

There will be no acknowledgment of receipt of the application.

2. *Content and Form of Application Submission:*

A proposed NARCH may include any or all of the following components: Student development projects; faculty/researcher development projects; research projects (including pilot projects); and ''core'' administrative facilities.

The content of the application should explain the components of the application, and how they help meet the purposes of the NARCH initiative. A description should be provided of the current state of the research and research training enterprise at the proposed NARCH and its institutional and community partners, including faculty/researcher and student profiles.

A clear statement should be presented of the overall goals, specific measurable objectives, and anticipated milestones. These elements should be presented in the context of needed improvements in the partners' organizational

infrastructure and environment for research. Documentation should be provided to establish that the research-intensive partner is an institution with a record of conducting research into the health of AI/ANs, and that it has a demonstrated commitment to the special encouragement of, and assistance to, AI/AN faculty/researchers, students, investigators, and communities for enhancing their capacity to engage in biomedical, behavioral and health services research. For competitive renewals of existing NARCH grants, previous accomplishments and progress from the time of the initial NARCH award must be described. Documentation about the nature of the partnership itself should be included, such as: the process to develop the application and proposed NARCH itself, the past and future efforts to increase the capacity of the partners to improve their partnership, and efforts to contribute to the success of the NARCH. Applicants are encouraged to articulate plans for the development of partnerships toward the possible planning of a national native health research conference or other national research training. The development of additional future collaborative research and research training opportunities should also be an integral part of each NARCH core proposal. For previously existing NARCH centers, a specific and detailed list of accomplishments and assessment of the benefits from the previous NARCH grant(s) is required.

A plan for assessment of the benefits of the activities by the proposed NARCH on specific, measurable outcomes identified in the application should be provided. IHS and NIGMS recognize that Tribes, Tribally-based organizations, and research-intensive institutions are diverse in their missions, their health and economic status, and their cultures. Such an assessment for a new NARCH could include a self-study by the proposed NARCH and its partners, which focuses on fact-finding, program evaluation, and recommendations for improvement in key areas.

Strategies for determining the initial and ongoing success of their efforts for organizational development should also be presented. It is expected that each proposed NARCH will develop its own set of strategies that best match its circumstances. Guidance and suggestions for program evaluation of a proposed NARCH can be obtained from *http://www.the-aps.org/education/promote/promote.html.* For applications that are competing renewals of existing NARCH centers, the report and evaluation of the progress made under the previous NARCH grant(s) will be a key part of the application.

Applicants are strongly urged to contact NARCH initiative staff at an early stage to request the specific supplementary instructions for the PHS 398 for the NARCH grants. Supplementary instructions may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.* They will also be sent to any potential applicant who e-mailed their contact information to *narch@ihs.gov* with the words ''technical assistance'' in the subject heading.

If Student Development Projects are proposed, the NARCH application should describe new programs or modifications or additions to existing programs of the partners that encourage and facilitate AI/AN students to enter, advance, and remain in health research careers. Such projects might include, but are not limited to, providing employment as research assistants in research projects of research-active mentors with an explicit mentoring plan, providing other mentoring with an explicit mentoring plan, providing workshops to improve technical or communication skills, providing motivating seminars or journal clubs highlighting problems of interest to students, providing contact with role models, and providing opportunities to travel to present results at national scientific meetings. If research mentorships or apprenticeships are proposed, the application should clearly document the experience, proposed commitment, and quality of the mentors in providing guidance and advice to students (including responsible conduct of research and research integrity, teaching, and protection of human subjects), and in fostering the development of academic and/or community-based AI/AN researchers.

The application should describe how the development plans for the students will meet both the individuals' professional development goals, and one purpose of the NARCH initiative: To develop a cadre of AI/AN scientists and health professionals. The application must have an evaluation plan for the new project(s) that indicates the anticipated outcomes relative to the current baseline data. For example, one outcome might be the improved retention of AI/AN students in science majors. The application should indicate the anticipated (quantitative) improvement relative to the current retention rate. Accomplishments of (and connections with) any previously funded NARCH student development projects by the applicant or partners must be described.

A student in a NARCH Student Development Project must be a full-time or part-time student officially enrolled in an educational program leading to an undergraduate or graduate degree, or in a post-doctoral educational program, or (if well justified) in late high school. A helpful book about mentoring science students is found at *http://books.nap.edu/catalog/5789.html.*

If Faculty/Researcher Development Projects are proposed, the NARCH application should describe the need, proposed activity, and anticipated outcomes. Faculty/researcher development projects might include, but are not limited to, short-term mentored research experiences in the lab of an active NIH-extramurally-funded researcher with an explicit mentoring plan, long-term general mentoring under an explicit mentoring plan, or attendance at workshops or courses or national meetings needed for acquiring specific skills or methodologies needed for prospective research. As with student development projects, the application should document the experience, proposed commitment, and quality of the mentors, teachers, or experience in providing guidance and advice to faculty/researchers, and in fostering the development of academic and community-based AI/AN research. The application must also describe the evaluation plan for the faculty/researcher development project. The application must clearly describe how the development plans for faculty/researchers will meet both the individuals' professional development goals, and two purposes of the NARCH initiative:

- To develop a cadre of AI/AN scientists and health professionals, and
- To enhance the partnership of the proposed NARCH.

For grantees with previous NARCH funding for faculty/researcher development projects, a detailed list of the accomplishments of (and connections with) any previously funded NARCH faculty/researcher development projects by the applicant or partners must be described.

NARCH applications may include a maximum of five (5) regular Research Projects and a maximum of five (5) Pilot Research Projects. Unlike regular research projects, a pilot research project is limited in scope and is not expected to have preliminary data. It is also limited to a budget of no more than $75,000 direct costs per year for four years. The pilot research project is intended for faculty/researchers without current Federal research support.

Support for faculty/researchers participating in pilot research projects is preparatory to seeking more substantial funding from NIH research grant programs (e.g., Academic Research Enhancement Award, K, and R01 awards), as well as funding from other agencies and private sources. Funds received from the proposed NARCH to support pilot research projects may not be used to supplement ongoing research projects. A NARCH application need not include both research projects and pilot research projects. Applications for only pilot research projects or for only research projects may be submitted. Individual project investigators may propose either a research project or a pilot research project, but not both. For research projects that are continuations or modifications or outgrowths of research projects (including pilot research projects) under previous NARCH grants, the accomplishments of the previous research project(s) should be detailed and a logical description given as to how the results of the previous work has led to the current proposal.

Each research project or pilot research project should follow the instructions provided in PHS 398 (Revised 11/2007) for preparing research grant applications. The professional development goals must clearly describe specific objectives and milestones which should include, but are not limited to, improving competitiveness in acquiring grant support. The applicant should describe how successful completion of the proposed research project will improve the research skills and will help develop the students and faculty/researchers, thus contributing to the overall goals and specific measurable objectives of the proposed NARCH.

Each research project or pilot research project must follow the IHS policy concerning Tribal approval, that all research involving AI/AN Tribes be approved by the Tribal governments with jurisdiction. That is, each grantee must include a resolution of approval from the Tribal government(s), or (if applicable) a letter of support signed by the Executive Director or CEO of the eligible AI/AN organization, or both (if applicable) for projects that involve people or community(ies) of an AI/AN Tribe, or an eligible Tribal organization. For NARCH proposals from multi-Tribal consortia with projects that involve only one or a few of the Tribes of the consortium, some description should be provided as to the process through which the particular Tribes were chosen to participate.

Research projects (including pilot research projects) proposed under this initiative must be in research areas normally funded by any of the NIH or other research agencies in the HHS. Research projects addressing health disparities and the health priorities of the AI/AN partner are especially encouraged.

A listing of grants recently funded by NIH may be found at Computer Retrieval of Information on Scientific Projects (CRISP), a searchable database of Federally-funded biomedical research projects conducted at universities, hospitals, and other research institutions. It may be accessed at *http://report.nih.gov/crisp/crispquery.aspx.* The following agencies, institutes, offices, and centers have stated particular interests in supporting research under the NARCH Program as follows:

National Institute of Dental and Craniofacial Research (NIDCR)

Oral Health Research

NIDCR is committed to reducing the disproportionate burden of oral diseases experienced by AI/ANs. The focus of NIDCR's health disparities research is on improving oral health status and quality of life by understanding and addressing oral diseases that are prevalent in AI/AN communities, specifically caries (including early childhood caries), oral and pharyngeal cancer, and periodontal disease. Interdisciplinary research teams and the full participation of communities are viewed by NIDCR as essential components of any health disparities research.

Data that document oral disease prevalence are readily available for some populations, but not for others. Homogeneity in subgroups of populations cannot be assumed. For instance, there are national data for Mexican Americans, but not for the numerous other Hispanic subgroups. Similarly, data regarding the oral health status of various AI/AN Tribes are unavailable. Moreover, available data provide little insight into the etiology or determinants of oral disease and oral health. The paucity of quality data and conceptual models concerning the broad array of potential determinants and risk-factors inhibits progress toward preventing disease, and improving oral health status and quality of life. The NIDCR invites applications that, in preparation for intervention research, explore the complex array of social, behavioral, psychological, contextual, environmental, and biological factors and their interactions that may contribute to oral health disparities within AI/AN communities. Including oral health status measures within broader epidemiologic studies is encouraged. However, applications that are limited to the assessment of disease prevalence and that explore a very limited range of potential determinants will be considered non-responsive.

The NIDCR has particular interest in intervention research that will provide clinically meaningful outcomes and essential information needed to inform clinical practice, public health policy, health care provision, community and/or individual action. Intervention studies that are grounded in theory are needed. Both basic and applied intervention research applications are invited. Studies may need to intervene at multiple levels within communities. The NIDCR encourages the use of the strongest research design possible and recognizes that not all intervention research is amenable to randomized clinical trials. Examples of health disparities intervention research of interest to the NIDCR includes but are not limited to:

- Effectiveness studies that tailor/target preventive approaches to communities/individuals;
- Research that intervenes in novel ways on macro- or intermediate level determinants of oral health status;
- Health services research that explores alternative approaches to delivering preventive oral health care;
- Studies that intervene on common risk factors or that take a systems approach;
- Studies that explore multifaceted strategies to intervene at several levels within society;
- Dissemination and implementation research at multiple organizational levels; and
- Research that uses appropriate technology for translation, implementation, adoption, adherence, and acceptance of oral disease prevention programs in defined populations, clinics, and communities.

Intervention research should be reasonably applicable to a specific AI/AN population. To facilitate adequate enrollment and generalizability, intervention studies may need to be conducted at multiple sites. Studies may be conducted at a single site only if enrollment is adequate and if sufficient numbers of participants are available to allow extrapolation of clinically meaningful results to the specific AI/AN population of interest.Pilot research projects that are designed to lead to larger research projects funded as part of a center or as

free-standing NIH grants may be proposed.

For additional information about oral health research contact: Ruth Nowjack-Raymer, M.P.H., PhD, Director, Health Disparities Research Program, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Room 640, Bethesda, MD 20892–4878, Phone: (301) 594–5394, Fax: (301) 480–8322, e-mail: *nowjackr@mail.nih.gov.*

National Institute on Drug Abuse (NIDA)

Neuroscience and Drug Abuse Research:

AI/ANs demonstrate higher rates of drug abuse, particularly methamphetamine, tobacco and alcohol abuse, relative to other racial subgroups. According to 2002–2006 National Survey on Drug Use and Health (NSDUH) data, AI/AN past year methamphetamine use was 1.4% compared to 0.1% for African Americans, 0.6% for Hispanics or Latinos and 0.7% for Whites. Prevalence of use is high in both men and women.

Drug abuse patterns among AI/AN are complex and can vary by factors such as Tribe and geographic location. While some datasets are available that can provide general epidemiological data regarding use and abuse rates in this group, data are needed that better clarify where use rates are highest, among which Tribes, age and gender groups and the factors that predict drug abuse in these locales and groups. These data will assist in developing more targeted interventions and in identifying mechanisms related to drug abuse which can then serve as focal points for intervention.

In addition to scarce data on patterns of use, limited data are available assessing drug abuse prevention and treatment interventions for AI/AN. The matrix model has been proposed in particular to address methamphetamine abuse, but few data are available to assess the efficacy of this approach with this population. Several preventive interventions have been designed particularly for this population and results from them indicate their value, but more research is needed to clarify why these sometimes don't work in expected ways and whether the interventions that are being used but have not been evaluated are working to reduce drug use.

The NIDA is committed to reducing health disparities in drug abuse and related health and social consequences among AI/AN. Further, the Institute supports methodologies required by the NARCH, expecting that studies be developed and implemented using community participatory approaches.

Research topics of interest include but are not limited to:

- Studies that explore a range of behavioral, cultural, environmental, and individual factors that contribute to drug abuse;
- Studies that explore the consequences of drug abuse among AI/ANs;
- Studies that consider the full context of drug abuse, including poverty, family factors, school factors, intergenerational trauma, etc.;
- Studies that explore the role of traditional practices and spirituality in protecting against drug abuse;
- Studies that explore other factors that protect against use in those groups for whom use rates are lower;
- Studies that explore the efficacy and/or effectiveness of culturally relevant preventive interventions;
- Studies that explore the efficacy and/or effectiveness of culturally relevant treatment interventions;
- Studies that assess factors related to service utilization, including use rates and access to services, either in reservation or urban settings; and
- Studies that explore the organization, management and delivery of interventions.

For additional information about neuroscience or drug abuse research contact: Kathy Etz, PhD, National Institute on Drug Abuse, 6001 Executive Blvd., Room 5153 MSC 9589, Bethesda, MD 20852, Phone: (301) 402–1749, Fax: (301) 480–2543, e-mail: *Kathleen.Etz@nih.hhs.gov.*

National Institute on Alcohol Abuse and Alcoholism (NIAAA)

Alcohol Research

NIAAA is committed to reducing the disproportionately high burden of illness associated with alcohol use, abuse, and dependence among AI/AN people. Alcohol-associated disability-adjusted life years (DALYs) remain highest among AI/ANs in comparison to all other U.S. ethnic groups. AI/AN people suffer from unacceptably high rates of alcohol abuse and dependence, alcohol-related morbidity and mortality, and intentional and unintentional injuries associated with alcohol use. Nevertheless, AI/AN people are heterogeneous on many dimensions with over 562 Federally-recognized Tribal entities. To address alcohol-related health disparities of AI/AN people, more needs to be known about how differences between Tribes, geographic regions, residence on reservations, urban or rural areas, as well as more typical demographic variables such as age, education, income, and gender influence alcohol use and associated health status outcomes. Such information can guide the development of more effective and culturally appropriate ways of identifying and intervening with those who suffer from alcohol-related problems, as well as preventing alcohol problems before they occur. Additional research is also needed to understand how to best advance the dissemination of research findings on alcohol and health, so that AI/AN people can benefit from the latest research discoveries. Finally, NIAAA is aware that oftentimes researchers who conduct investigations among communities of color are members of these cultural, racial or ethnic groups themselves. NIAAA is committed to identifying and providing training and mentoring experiences to help AI/AN alcohol researchers advance the science of alcohol use and give back to their communities.

The NIAAA is committed to reducing alcohol related health disparities and is committed to the NARCH program. Research topics of interest to NIAAA include but are not limited to:

—Studies that assess the differing needs of various Tribal groups, considering variations in rates of alcohol use, misuse and abstinence.
—Studies that develop new interventions or adapt existing prevention and/or treatment interventions that take strengths of the AI/AN culture into consideration.
—Studies that investigate the application/adaptation of evidence based interventions among AI/AN groups.
—Studies that investigate how traditional spiritual and medical treatments can be applied/adapted to improve intervention outcomes among AI/AN peoples.
—Studies that explore the effectiveness and/or efficacy of commonly used interventions such as screening and brief intervention or referral among AI/AN populations.
—Studies that investigate the risk and protective factors associated with drinking among women of childbearing age so as to inform culturally sensitive, effective FASD prevention.
—Studies that investigate ways to delay onset of youth drinking among AI/AN young people.
—Studies that investigate the association between alcohol use and suicide among AI/AN people, especially youth. Studies may attempt to understand the individual and

group level variables that contribute to ''epidemics'' of suicide among AI/AN youth.

—Studies that explore the consequences of alcohol use and misuse among AI/AN peoples; these consequences may include but are not limited to other social and health problems (*i.e.*, diabetes, obesity, poor nutrition, cancer, liver disease, etc.), interfamilial violence, intentional and unintentional injury, and driving under the influence.

—Studies that investigate the acceptance and efficacy of pharmacotherapy for alcohol abuse and dependence within integrated health counseling approaches.

—Studies that investigate the influence of alcohol use on the spread and treatment of Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) among AI/AN peoples.

For additional information contact:

Judith A. Arroyo, PhD, Minority Health and Health Disparities Coordinator, Project Official, Division of Epidemiology and Prevention Research, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane Room 2079, Bethesda, MD 20892–9304, (for Fed Ex use Rockville, MD 20852–1705), Office: 301–402–0717, Fax: 301–443–8614, e-mail: *Judith.Arroyo@nih.hhs.gov.*

National Cancer Institute (NCI)

Cancer Health Disparities Research

The Center to Reduce Cancer Health Disparities (CRCHD) is committed to reducing cancer health disparities among AI/ANs. Investigators are encouraged to submit research projects addressing every aspect of cancer and cancer health disparities research. CRCHD welcomes investigations in basic, clinical, translational, and population-based research addressing cancer health disparities among AI/AN. The CRCHD is central to the NCI's efforts to reduce the unequal burden of cancer in our society. As part of these efforts, the Diversity Training Branch, CRCHD, has been supporting NARCH projects with cancer relevance since 2003.

For additional information contact:

Dr. Peter Ogunbiyi, Program Director, Diversity Training Branch, Center to Reduce Cancer Health Disparities, National Cancer Institute, 6116 Executive Boulevard, Suite 602, Bethesda, MD 20892–8341 (U.S. Postal Service), Phone: 301–496–7344, Fax: 301–435–9225, e-mail: *po43t@nih.gov.*

Health Literacy Research:

The HHS, in its Healthy People 2010 initiative, defines health literacy as, ''the degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions.'' (Please see: *http://www.healthypeople.gov/document/HTML/Volume1/11HealthCom.htm).* Health literacy is a complex phenomenon that involves individuals, families, communities, and systems. For instance, consumers, patients, caregivers, traditional healers, or other laypersons may vary with respect to:

• Access (e.g., to audience-appropriate information, media or professionals);

• Skills (e.g., to gather and comprehend health information; to speak and share personal information about health history and symptoms; to act on information by initiating appropriate follow-up visits and conveying understanding back to the information source; to make decisions about basic healthy behaviors, such as healthy eating and exercise; to engage in self-care and chronic disease management);

• Knowledge (e.g., of health and medical vocabulary, concepts such as ''risk'', the organization and functioning of healthcare systems, cultural beliefs and possible differences in traditional and current medical systems about disease causation, prevention and treatment);

• Abilities (e.g., sensory, communication, cognitive, or physical challenges or limitations);

• Features of health care providers and public health systems (e.g., the communication skills of health professionals, platforms employed for patient education, built environments, and signage);

• Traditional healers and their role, especially in relation to the existing medical systems which could lead to different understanding in health and disease progression;

• Demographics (e.g., developmental or life stage, cultural, linguistic, or educational differences that affect health beliefs, knowledge, and communication).

Too often people with the greatest health burdens have limited access to relevant health information. One reason is the complex and cumbersome ways in which health information is presented. Health care professionals may not communicate effectively with individuals. For instance, achieving informed consent for treatment is difficult when health care personnel cannot explain biological processes or treatment procedures in simplified language and patients cannot interpret health information. These situations hamper the effectiveness of health professionals' efforts to prevent, diagnose, and treat medical conditions, and limit many health care consumers' abilities to make important health care decisions. Another reason is due to individuals' limited abilities to fully interpret and understand complex health terminology and instructions. This could be further exacerbated by different belief systems and adoption of methods for prevention and treatment. Limited numeracy can also impede the ability to make personal decisions related to risk, risk avoidance, and risk reduction. For instance, to follow health care instructions, patients need to be able to comprehend written and oral prescription instructions, directions for self-care, and plans for follow-up tests and appointments.

Specific Objectives

Researchers are strongly encouraged to review the general illustrative examples of topics relevant to health literacy provided below. Applications should address health promotion, prevention, treatment, or management of diseases or health conditions, and/or the improvement of health or health care outcomes. The research must involve at least one of the following:

• Health literacy, or one of its many components, as a key outcome;

• Health literacy as a key explanatory variable for some other outcome;

• Methodological or technological improvement to strengthen research on health literacy; and/or

• Prevention and/or intervention strategies that focus on health-literacy.

Studies to develop, or evaluate, the readability or utility of specific materials that are intended for single uses or single audiences are not responsive to this program announcement unless these investigations are integral to testing a significant research hypothesis related to health literacy.

Approaches

A wide variety of research approaches are encouraged:

• Basic research that investigates or describes the nature of health literacy and the magnitude of health literacy problems;

• Applied research addressing issues pertinent to health literacy practices (e.g., systems level interventions) and research-in-practice (e.g., active

potential end users participate as supportive research partners);

• Develop theoretical models, refine research constructs, improve methods and measurements, and establish causal relationships (e.g., between low health literacy and lack of effective health promotion);

• Evaluation research that develops and tests the effectiveness of interventions, or adapts and tests existing programs (including those that are implemented by health care systems and systems outside of health care), to reduce low health literacy and its adverse consequences;

• Secondary analyses of existing datasets as well as meta-analytic studies; and

• Multilevel, multidisciplinary, interdisciplinary, and transdisciplinary research is encouraged, especially studies that incorporate individual, family, community and societal mediators of health literacy in childhood and adulthood, or state-of-the-art health communication theory and knowledge.

For additional information about NCI health literacy research contact: Sabra F. Woolley, Ph.D., Program Director, Health Communication and Informatics Research Branch, National Cancer Institute, 6130 Executive Blvd. Room 4084, Bethesda, Maryland 20892–7365, Phone: 301–435–4589, Fax: 301–480–2087, E-mail: *Sabra.Woolley@nih.hhs.gov.*

Tobacco Control Research

AI/ANs have been documented to have the highest smoking rate of any major racial/ethnic group in the U.S. According to the 2005 National Health Interview Survey of adults 18 and over, 32% of AI/AN are current smokers, compared with 21.9% of non-Hispanic whites, 21.5% of non-Hispanic blacks, 13.3% of Asians and 16.2% of Hispanics. Prevalence of smoking is high among both men (37.5%) and women (26.8%).[1] A similar pattern can be seen among youth, where AI/AN youth have substantially higher smoking prevalence (23.1%) than non-Hispanic whites (14.9%), Hispanics (9.3%), non-Hispanic blacks (6.5%), and Asians (4.3%), according to data from the National Survey on Drug Use and Health. These data also show that non-smoking AI/AN youth demonstrated higher susceptibility to experimenting with smoking than most other racial/ethnic groups.[2]

At the same time, however, tobacco use patterns among the AI/AN population are complex and can vary substantially among subgroups of this population. Smoking rates among AI/ANs vary widely by region, being highest in the northwestern United States, in Canada, and in Alaska. Additionally, use of smokeless tobacco is higher among AI/AN adults compared with other racial/ethnic groups. Some studies have found particularly high rates of smokeless tobacco use (greater than 50%) among AN populations, including pregnant women, due to the use of Iqmik, a traditional form of smokeless tobacco.[3]

Understanding tobacco use among Native American populations is also complicated by the fact that tobacco has had a substantial role in Native American culture and tradition. Historically, tobacco has been used in medicinal and healing rituals and in ceremonial and religious practices. It is important to distinguish the traditional, ceremonial uses of tobacco, which are limited to specific occasions, from addictive use of tobacco products. However, the relationship between these different contexts of tobacco use and their impact on behavior has not received sufficient scientific study.

Moreover, limited data are available on the effectiveness of tobacco use cessation interventions targeted to AI/ANs. Preliminary focus group studies suggest that Native American smokers are more likely to have negative attitudes towards pharmacotherapies, such as concerns about side effects and lack of trust in conventional medicine.[4] Thus, there is a need to develop culturally-appropriate interventions targeted to this population.

The NCI Tobacco Control Research Branch is committed to supporting transdisciplinary research aimed at reducing disparities in tobacco use and related health outcomes. The NARCH provides a unique mechanism to support collaborative research involving researchers from multiple disciplines to address a complex scientific and public health challenge.

Sample research areas of interest include but are not limited to the following:

• Studies to understand the role of a range of behavioral, cultural, and environmental factors that lead to initiation of tobacco use among AI/AN populations;

• Development and evaluation of culturally appropriate interventions for tobacco use prevention and cessation targeted to AI/AN populations;

• Studies of how tobacco related attitudes and behaviors in youth and adults are influenced by ceremonial tobacco use and other cultural factors;

• Studies of tobacco use behavior in relation to different products, including dual use of cigarettes and smokeless tobacco;

• Research on the characteristics, use, and health effects of traditional tobacco products, such as Iqmik;

• Research to understand disparities in tobacco use within AI/AN populations given substantial variations by region and other factors; and

• Studies to identify and address barriers to treatment among AI/ANs.

References

1. Tobacco Use Among Adults—United States, 2005. MMWR. October 27, 2006; 55: 1145–1148.

2. Racial/Ethnic Differences Among Youths in Cigarette Smoking and Susceptibility to Start Smoking—United States, 2002–2004. MMWR. December 1, 2006; 55; 1275–1277.

3. Renner CC, Patten CA, Day GE, Enoch CC, Schroeder DR, Offord KP, Hurt RD, Gasheen A, Gill L. Tobacco use during pregnancy among Alaska Natives in western Alaska. Alaska Med. 2005;47:12–16.

4. Burgess D, Fu SS, Joseph AM, Hatsukami DK, Solomon J, van Ryn M. Beliefs and experiences regarding smoking cessation among American Indians. Nicotine Tob Res. 2007;9 Suppl 1:S19–28.

For additional information about NCI tobacco research contact: Mark Parascandola, PhD, Epidemiologist, Tobacco Control Research Branch, National Cancer Institute, 6130 Executive Blvd. MSC 7337, Executive Plaza North, Room 4039, Bethesda, MD 20892, Phone: 301–451–4587, Fax: 301–496–8675, E-mail: *paramark@mail.nih.gov.*

National Heart, Lung, and Blood Institute (NHLBI)

Cardiovascular and Respiratory Research

The NHLBI has a strong history of supporting research to document and intervene on health disparities among AI/ANs, including the Strong Heart Study, Pathways, Genetics of Coronary Artery Disease in Alaska Natives (GOCADAN), the Stop Atherosclerosis in Native Diabetics Study (SANDS), and Community-Responsive Interventions to Reduce Cardiovascular Risk in AI/ANs.

The Strong Heart Study showed that many AI/AN communities bear a heavy burden of cardiovascular disease (CVD) and cardiovascular risk factors (e.g., obesity, diabetes) that could be reduced through effective interventions on modifiable risk factors. The high burden of disease will worsen unless behaviors and lifestyles affecting CVD risk can be changed. Prevalence of obesity in AI/AN communities is about 50% higher than in the U.S. general population, in which obesity is often described as being of epidemic proportions. In some AI/AN communities, cigarette smoking,

sedentary lifestyle, and stress augment the adverse effects of obesity. AI/ANs are particularly vulnerable to Type 2 diabetes, a problem exacerbated by high rates of obesity. Diabetes prevalence is 3–20 fold higher among AI/ANs than in the general U.S. population. It is an important cause of coronary heart disease, cardiomyopathy, end-stage renal disease, non-traumatic amputation, and vision impairment. Lipid abnormalities also are common in Type 2 diabetics, particularly high triglycerides and low HDL-cholesterol levels. Dyslipidemia and blood pressure can be improved by appropriate changes in diet and by increased exercise. CVD risk is also substantially improved by smoking cessation. In addition, attention to high stress levels, untreated sleep disordered breathing, short sleep duration, and depression may be warranted, because of evidence that they may influence the health behaviors of interest. For example, poorer diet, higher smoking rates, and physical inactivity are more prominent in those with high stress, sleep disorders, or depression. These psychosocial factors also are associated with CVD progression in observational epidemiologic studies, and there is evidence from smaller clinical studies that they may affect mechanisms leading to CVD. NHLBI is interested in supporting research in AI/AN communities that promotes the adoption of healthy lifestyles and/or improves behaviors related to cardiovascular risk, such as weight reduction, regular physical activity, and smoking cessation. These behaviors and lifestyles are known to affect biological cardiovascular risk factors, such as hypertension, dyslipidemia, obesity, glucose intolerance, and diabetes. In addition, control of these risk factors by guideline-based use of antihypertensive, lipid lowering, and hypoglycemic drugs can reduce their adverse consequences. However, these pharmacological interventions are often suboptimally utilized in AI/AN communities. The NHLBI is interested in reducing cardiovascular disease mortality and morbidity in AI/AN, whether by lifestyle changes, drug interventions, or combinations thereof.

Lifestyles characterized by sleeping less than 7 hours per night are associated with increased risk of CVD, obesity, diabetes, and all-cause mortality. Insufficient sleep and poor sleep quality is associated with abnormalities in hypothalamic-pituitary axis function and behavioral stress. Sleep deprivation compromises vigilance, judgment, mood, emotional expression, and other aspects of cognition increasing the risk of unstable patterns of behavior. The ability of sleep deprivation to enhance the encoding and recall of emotional (relative to neutral) memories may profoundly influence social interactions and stress. Insufficient sleep is associated with an increased risk of new onset substance abuse and relapse, and new onset depression and relapse. Intervention studies to assess the efficacy of improving sleep as part of a healthy lifestyle or assessing how improving sleep disorders could improve CVD outcomes would be of interest to NHLBI. Sleep disordered breathing appears to be 30–60% more common among American Indians than other racial and ethnic groups. Sudden infant death syndrome occurs 2.5 times more frequently in AI/AN children than in white children, and 2.0 times more frequently than in the U.S. population as a whole.

AI/AN also have been documented to exhibit high rates of chronic respiratory disease. AI/AN adults have the highest asthma rate among single-race groups. Recent evidence suggests that 11.6 percent of AI/AN suffer from asthma. This is significantly higher than the national average of 7.5 percent, and much higher than every other single racial or ethnic group. Chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis, is the sixth leading cause of death from chronic disease for AI/AN men and the seventh leading cause of death for women. AI/AN have the second highest rates of cystic fibrosis following whites. One in 10,500 AI/AN has cystic fibrosis compared with one in 3,200 whites. Pueblo Indians and Zuni Indians have higher incidence than among other AI/AN Tribes. NHLBI is interested in supporting research in AI/AN communities that includes studies of approaches to improve clinical delivery of efficacious treatments of chronic lung disease and their risk factors, improved methods of chronic lung disease self-management, studies to promote or maintain respiratory health or improved methods of rehabilitation for diseases of the lungs and airways, such as asthma, COPD, cystic fibrosis; sleep disordered breathing, occupational lung diseases, pulmonary vascular disease or pulmonary complications of AIDS.

In addition to these areas of research, the NHLBI recognizes a unique and compelling need to promote diversity in the biomedical, behavioral, clinical, and social sciences research workforce. The NHLBI expects efforts to diversify the workforce to lead to:

- The recruitment of the most talented researchers from all groups;
- An improvement in the quality of the educational and training environment;
- A more balanced perspective in the determination of research priorities;
- An improved capacity to recruit subjects from diverse backgrounds into clinical research protocols; and
- An improved capacity to address and eliminate health disparities.

For more information, please contact: Jared B. Jobe, Ph.D. (Cherokee), Program Director, Clinical Applications and Prevention Branch, Division of Prevention and Population Sciences, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 10018, MSC 7936, Bethesda, Maryland 20892–7936 (20817 express), Phone: (301) 435–0407, Fax: (301) 480–5158, E-mail: *JobeJ@mail.nih.gov.*

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS)

Research in Osteoporosis and other Bone Diseases, Osteoarthritis, Rheumatoid Arthritis and Skin Disease Within the NIAMS Mission

The NIAMS supports efforts to conduct research into the causes, treatment, and prevention of arthritis and musculoskeletal and skin diseases; the training of basic and clinical scientists to carry out this research; and the dissemination of research progress to improve the public health. Goals specific to the AI/AN communities involve research addressing the training of underrepresented minority AI/AN researchers and ensuring inclusion of Native communities in clinical research studies. NIAMS actively monitors the inclusion of minority populations in clinical research and will highlight any grants that specifically target AI/AN populations. The mission of the NIAMS is to support research into the causes, treatment, and prevention of arthritis and musculoskeletal and skin diseases, the training of basic and clinical scientists to carry out this research, and the dissemination of information on research progress in these diseases. Studies in these mission areas as they relate to the AI/AN population may be proposed.

For additional information about research in these areas contact: Dr. Phil Tonkins, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20912, Phone: (301) 594–4979, Fax: (301) 480–1284, E-mail: *tonkinsw2@mail.nih.gov.*

National Center for Complementary and Alternative Medicine (NCCAM)

Research on Traditional Healing Practices

Many AI/AN communities use traditional healing practices to prevent and/or treat diseases and to maintain health. NCCAM is interested in supporting research on traditional healing practices with these goals in mind. NCCAM is also interested in research on the safe and effective integration of conventional care with traditional healing practices for AI/AN communities. The methodological feasibility for integration has yet to be addressed for many traditional healing practices. Consequently, NCCAM is interested in supporting developmental studies to identify and address difficult methodological and design issues particular to traditional healing practices, as well as to allow for the development of contextually and culturally sensitive research mirroring the values of AI/AN communities.

Examples of study areas of interest include, but are not limited to:

- Qualitative research to characterize and document healing practices and diagnostic approaches of indigenous peoples, and study the feasibility of research on those practices and approaches in future clinical studies;
- Observational studies to explore patient and care provider preferences, beliefs, attitudes, and patient-provider interactions;
- Case-control, observational, and other studies to understand traditional healing strategies from multiples perspectives, including: (a) Optimal dosing, duration, and frequency of treatment; (b) type of treatment; (c) examinations of different healing practices to treat a particular disease/condition; (d) comparisons of complex versus simple interventions; (e) evaluation of adherence among patient populations to interventions with varying levels of complexity; and (f) examination of potentially important individual differences that mediate or moderate treatment outcome;
- Studies to determine if traditional healing practices can be translated into a broader clinical setting, in terms of: Reliability, responsiveness and utility; assessment procedures, instruments, and tools in psychosocial, functional, and physiological domains;
- Studies to construct and validate culturally sensitive data collection instruments; to design and pilot outcome measures consistent with the tenets of traditional, indigenous systems of medicine and comparisons of these outcome measures to those commonly used by conventional biomedicine; and
- Health services research of established AI/AN traditional healing practices to explore the factors that influence access to and use of such therapies; the nature, cost effectiveness, and quality of such care; and ultimately the effects on health and well-being.

For additional information on NCCAM-supported research topics, contact:

Sheila A. Caldwell, Ph.D., Program Officer, Office of Special Populations, National Center for Complementary and Alternative Medicine, 6707 Democracy Boulevard, Suite 401, MSC 5475, Bethesda MD, 20892–5475, Phone: (301) 594–3396, Fax: (301) 480–3621, E-mail: *caldwells@mail.nih.gov.*

Office of Research on Women's Health (ORWH)

Women's Health Research

The ORWH at the NIH supports research related to women's health and the study of sex and gender differences. Detailed information about the NIH Research Priorities for Women's Health, can be found at *http://orwh.od.nih.gov/research.html.*

For additional information on women's health research, contact: Lisa Begg, Dr. P.H., R.N., Director of Research Programs, NIH Office of Research on Women's Health, 6707 Democracy Blvd., Suite 400, Bethesda, MD 20892–5484, Phone: (301) 496–7853, Fax: (301) 402–1798, E-mail: *beggl@od.nih.gov.*

National Insitute of Mental Health (NIMH)

Research projects aimed at understanding the burden, treatment, intervention or prevention of mental disorders and Human Immunodeficiency Virus (HIV)/AIDS in AI/AN populations

Indigenous people in the United States are disproportionately affected by mental illness and HIV infection, as are the larger racial and ethnic populations such as African Americans and Latinos. AI/ANs are highly underrepresented in the physician workforce, as researchers, and in health research in general, numbering fewer than one hundred. Other factors that contribute to disparities that affect these communities include geographic isolation, poor access to health services, underutilization of health services, insufficient screening and partner management services, social and cultural norms, linguistics, stigma, and gender. Research is needed to identify and address the impact as well as the specific and unique aspects of mental disorders and HIV infection upon Native American communities. A critical component of response to mental health and HIV infection in Native American communities will be to identify, train, mentor, and develop Native American investigators. Towards these ends, a promising model is community-based participatory research together with community capacity building.

Areas of interest to the NIMH that can contribute to scientific knowledge about mental health and HIV interventions in Native Americans include, but are not limited to research studies:

- To investigate the clinical epidemiology of mental disorders and HIV infection across all clinical and service settings (e.g., primary care);
- To investigate research methods/community assessment to eliminate mental health disparities;
- To evaluate the impact of traumatic stress and other social, cultural, interpersonal, and environmental factors on risk for and course of mental disorders;
- To examine patient, provider, and contextual factors that influence diagnosis, help-seeking decisions and preferences, and the helping relationship;
- To understand processes underlying HIV and mental illness stigmas and discrimination in Native American communities;
- To develop and assess effective strategies and approaches for reducing HIV and mental illness stigmas and discrimination;
- To evaluate the effectiveness of treatment, pharmacologic, psychosocial (psychotherapeutic and behavioral), somatic, rehabilitative, and combination interventions on mental and behavior disorders—including acute and longer-term therapeutic effects on functioning for children, adolescents, and adults;
- To develop and tailor/target interventions to communities/individuals of Native Americans;
- To employ interventions that improve quality and outcomes of care (including diagnostic, treatment, preventive, and rehabilitation services);
- To conduct scientifically rigorous investigations of culturally appropriate interventions, prevention, and control strategies;
- To employ services interventions that remove barriers to care leading to the elimination of mental health disparities;
- To conduct studies of services organization, delivery (process and receipt of care), and related health economics at the individual, clinical,

program, community, and systems levels in specialty mental health, general health, and other delivery settings (such as the workplace, schools);

- To enhance research infrastructure and build research capacity for conducting intervention and services research;
- To explore alternative approaches (e.g., telehealth) to translating, delivering, implementing, and disseminating mental health care;
- To investigate adaptation, evaluation, safety, and costs of proven interventions;
- To explore dissemination and implementation strategies at multiple organizational levels; and
- To examine the role of community stakeholders in the research process, especially readiness for change.

For additional information on NIMH NonAIDS Applications contact: Carmen P. Moten, Ph.D., Chief, Primary Care, Socio Cultural and Disparities Research Programs, Division of Services and Intervention Research, National Institute of Mental Health, 6001 Executive Boulevard, Room 7131, MSC 9631, Bethesda, MD 20892–9631, Phone: (301) 443–3725, Fax: (301) 443–4045, E-mail: *cmoten@mail.nih.gov.*

For additional information on NIMH HIV/AIDS-related applications contact: David M. Stoff, Ph.D., Chief, HIV/AIDS Neuropsychiatry Program, AIDS Research Training and HIV/AIDS Disparities Program, Division of AIDS and Health and Behavior Research, National Institute of Mental Health, 6001 Executive Boulevard, Room 6210, MSC 9619, Bethesda, MD 20892–9619, Phone: (301) 443–4625, Fax: (301) 443–9719, E-mail: *dstoff@mail.nih.gov.*

For additional information on NIMH research on Stigma and Health Disparities contact: Emeline Otey, Ph.D., Chief, Stigma and Health Disparities Program, Division of AIDS and Health and Behavior Research, National Institute of Mental Health, 6001 Executive Boulevard, Room 6227, MSC 9615, Bethesda, MD 20892–9615, Phone: (301) 443–9284, Fax: (301) 480–2920, E-mail: *eotey@mail.nih.gov.*

National Institute of Biomedical Imaging and Bioengineering (NIBIB)

Research in Technology for Health

The National Institute of Biomedical Imaging and Bioengineering (NIBIB) is committed to reducing health disparities through the development of new and affordable biomedical technologies. To this end, the NIBIB is interested in supporting the translation of biomedical technologies that target the health needs of AI/AN communities. Specifically, the NIBIB is interested in supporting the development of technologies that have broad therapeutic and interventional applications as well as technologies that complement technology development in all program areas of the NIBIB, *http://www.nibib.nih.gov/Research/ProgramAreas.*

For additional information about NIBIB programs contact: John W. Haller, Ph.D., National Institute of Biomedical Imaging and Bioengineering, NIH/DHHS, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892–5649, Phone: (301) 451.4780, Fax: (301) 480.1614, E-mail: *John.Haller@nih.hhs.gov.*

National Eye Institute (NEI)

Vision Research

The NEI supports research and health information dissemination with the goal of protecting and prolonging the vision of the American people. Examples of such activity that may be of interest include, but are not limited to:

- Epidemiological studies to determine the prevalence and possible risk factors of eye diseases and disorders among AI/AN populations;
- Basic research studies into the causes and mechanisms of eye diseases and visual impairments in AI/AN, research into disparities in access to ophthalmic/optometric health services; and,
- Development and evaluation of culturally appropriate health education and intervention.

For additional information on vision research topics contact: Jerome R. Wujek, Ph.D., National Eye Institute, 2020 Vision Place, Bethesda, MD 20892–3655, Phone: (301) 451–2020, Fax: (301) 402–0528, E-mail: *wujekjer@nei.nih.gov.*

THE OMISSION ABOVE OF ANY NIH INSTITUTE, CENTER, OFFICE, OR RESEARCH AREA SHOULD NOT BE TAKEN AS A LACK OF AVAILABILITY OF SUPPORT FOR PROJECTS IN THOSE AREAS. NARCH is an NIH-wide partnership, led at NIH by the National Institute of General Medical Sciences (NIGMS). General research priorities for all of the individual NIH Institutes, Centers, Divisions and Offices can be found on their respective Web sites at: *http://www.nih.gov/icd/index.html.* However, applicants and potential academic partners are reminded that *the NARCH program is focused on the research needs of the tribes and not those of the federal or academic partners.*

Previous NARCH grants have been funded by the following partners:

- National Institute of General Medical Sciences (NIGMS);
- National Cancer Institute (NCI);
- National Heart, Lung, and Blood Institute (NHLBI);
- National Human Genome Research Institute (NHGR);
- National Institute on Alcohol Abuse and Alcoholism (NIAAA);
- National Institute of Allergy and Infectious Diseases (NIAID);
- National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS);
- National Institute of Dental and Craniofacial Research (NIDCR);
- National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK);
- National Institute on Drug Abuse (NIDA);
- National Center for Complementary and Alternative Medicine (NCCAM);
- National Center on Minority Health and Health Disparities (NCMHD);
- NIH Office of Behavioral and Social Sciences Research (OBSSR);
- NIH Office of Research on Women's Health (ORWH); and
- Agency for Healthcare Research and Quality (AHRQ).

In addition to these partners within HHS, the Federal Collaborative on Health Disparities Research (FCHDR), Headquartered in the HHS Office of Minority Health (OMH) is in the process of seeking co-funding partnerships for the NARCH program with other departments and agencies of the Federal Government. Any additional information that develops after the publication of this announcement will be posted on the NARCH program Web site at *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm* and disseminated to the TECHASSISTANCE-NARCH listserve developed from persons e-mailing their contact information to *narch@ihs.gov.*

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times

A. Letter of Intent Deadline: March 15, 2009

Prospective applicants are asked to submit a letter of intent that includes the title of the new project(s) proposed, the name, address, and telephone number of the project Principal Investigator(s), the identities of the partners and of key personnel, and the number and title of this RFA. The letter of intent should be received before 5 p.m. Eastern Standard Time on March 15, 2009, by Mushtaq A. Khan, D.V.M.,

Ph.D., Chief, Digestive and Respiratory Sciences IRGs, Center for Scientific Review, MSC 7818, Room 2176; 6701 Rockledge Drive; Bethesda, MD 20892 (20817 for express or courier service). Phone: (301) 435–1778; Fax (301) 451–2043; E-Mail: *khanm@csr.nih.gov.*

Letters may be submitted by mail, fax or e-mail. Although a letter of intent is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows the IHS and NIH Center for Scientific Review (CSR) staffs to estimate the potential review workload and avoid conflict of interest in the review.

B. Application Deadline: May 14, 2009

The applications must be received before 5 p.m. Eastern Standard Time on May 14, 2009, at the Center for Scientific Review (CSR) National Institutes of Health, 6701 Rockledge Drive, Room 6160—MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). Phone: (301) 435–0715) and at the IHS Division of Grants Operations (DGO) Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852–1627 [zip code is unchanged for express/courier services], Phone: (301) 443–5204. Applications received after this date will be returned to the applicant. Competing applications not meeting the deadline date specified in the announcement are considered late applications and will not be considered for funding under this announcement. The CSR will not accept any application in response to this RFA that is essentially the same as one currently pending initial review, unless the applicant withdraws the pending application.

The CSR will not accept any application that is essentially the same as one already reviewed. This does not preclude the submission of substantial revisions of applications already reviewed, but such applications must include an introductory letter addressing the previous critique.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' A State approval is not required.

5. Funding Restrictions

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74 all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant under this announcement.
- IHS will not acknowledge receipt of applications.
- Grantees are allowed a reasonable period of time in which to submit required financial and performance reports. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, or cause other eligible projects or activities involving that grantee organization, or the individual responsible for the delinquency to not be funded. Failure to obtain prior approval for change in Scope, Principal Investigator, Grantee Institutions, Successor in Interest, or Recipient Institute Name, undertaking any activities disapproved or restricted as a condition of the award, may result in fund restrictions.

6. Other Submission Requirements

Each submitted research project (including pilot research projects) must be budgeted so that it could stand on its own. That is, each project should be fundable under its own budget so that it could be completed even if none of the rest of the NARCH is funded. All things vital to each project should be included in the budget of that project and not included in the core. The NARCH core should include only administrative, training or other items that are non-essential to the research projects. The core should also include the capacity to take advantage, for training purposes, of any new research opportunity that becomes available to the grantee, whether through NARCH funding or other new resources. The core should be budgeted as if it were an additional project and the total amounts requested on the face page of the NARCH application should represent the sum of the projects plus the core. Each subcontractor participating in each project (or core) should submit its budget as part of that project's budget, using appropriate form pages from the PHS 398. Each project submission should include a set of budget pages from each of the institutional partners participating in that project. Each research project budget should explicitly include that portion of the grantee's indirect costs that are associated with activities under that project, including direction and oversight of the subcontracts. Each project (and core) must include a checklist and face page for that project. Only the main face page for the entire NARCH is required to have the signatures of the NARCH principal investigator and official signing for the applicant organization.

Submit a typed and signed original application, including the checklist, and one single-sided photocopy of the entire application (including Appendices and supporting documents) in one package to: Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852–1627 (zip code is unchanged for express/courier services), Phone: (301) 443–5204.

At the time of submission, applicants must also send four additional single-sided photocopied and signed applications, including the Checklist, Appendices, and supporting documentation to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160--MSC 7892, Bethesda, MD 20892–7720, Bethesda, MD 20817 (for express or courier service). Phone: (301) 435–0715. The CSR no longer accepts hand delivered applications. E-mail or other electronic applications will not be accepted under this announcement.

Specific supplementary instructions for the PHS 398 application and budget preparation for the NARCH program may be obtained from the initiative contacts listed under VII. Agency Contacts, and will be posted at *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm.* They will also be sent to any potential applicant who e-mailed their contact information to *narch@ihs.gov* with the words ''technical assistance'' in the subject heading.

DUNS Number

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–

866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

A DUNS number is required before Central Contractor Registry (CCR) registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located at *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

Electronic Research Administration (eRA) User Name

Each NARCH Application's Principal Investigator is required to have a user name with the NIH eRA system. This also requires that the applicant institution (Tribe or Tribal organization) be an eRA Commons Registered Organization. A list of eRA Commons Registered Organizations can be found at *http://era.nih.gov/commons/quick_queries/commons_registered_orgs.cfm*. More information on the eRA Commons system can be found at *http://era.nih.gov/.*

V. Application Review Information

Upon receipt, IHS and NIH staff will administratively review applications for completeness and responsiveness. Applications that are incomplete, non-responsive to this RFA, or do not follow the guidelines of the PHS form 398 (revised 11/2007) or of the supplementary instructions for NARCH grants (available at: *http://www.ihs.gov/MedicalPrograms/Research/narch.cfm* or from *narch@ihs.gov*), may be returned to the applicant without further consideration. Applications will be evaluated in accordance with the criteria stated below for scientific and technical merit by appropriate peer review groups convened by the CSR. The National Advisory General Medical Sciences Council will conduct the second level of review.

1. Criteria

Priorities for funding will be based on the scientific and technical merit of the application, the assessed potential of investigators in the developmental stages of their careers, and the likelihood that the proposed project(s) can further the purposes of the NARCH initiative. Awards will be made only to organizations with financial management systems and management capabilities that are acceptable under HHS policy. Awards will be administered under the HHS Grants Policy Statement, January 2007.

A. Review of Student and Faculty/Researcher Development Plans

The anticipated effectiveness of the proposed NARCH in making a difference relative to the current base-line data (based in part on previous experience of the NARCH) will be assessed. Factors to be considered include:

- The appropriateness of the content, phasing, quality, and duration of the student or faculty/researcher development plans in the NARCH application to achieve the scientific development of the faculty/researcher, post-doctoral, pre-doctoral, undergraduate, and (if well justified) high school students; and
- The research experience and expertise, proposed commitment, and quality of the mentoring plan and of individual mentors of the partners in providing mentoring, guidance, and advice to candidates (including training in responsible conduct of research and research integrity, teaching, and protection of human subjects), and in fostering the development of academic and community-based AI/AN researchers.

B. Review of Research Projects

The NIH has announced procedures to be used for the review of research grant applications (NIH Guide, Volume 26, Number 22, June 27, 1997 or see *http://grants.nih.gov/grants/guide/notice-files/not97-010.html and http://grants.nih.gov/grants/guide/notice-files/NOT-OD-05-002.html* for additional updated information.) For NARCH applications, the five criteria listed in this announcement will be used for the scientific review of research projects and pilot research projects. The review of research projects and pilot research projects will be the same except that applications for pilot studies may be smaller in scope and would not be expected to have preliminary data.

In the written comments, reviewers will be asked to discuss the following aspects of the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these purposes. Each of these criteria will be addressed and considered in assigning the overall score, weighting them as appropriate for each application.

- Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge or clinical practice be advanced? What will be the effect of these studies on the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?
- Approach: Are the conceptual or clinical framework, design, methods, and analyses adequately developed, well integrated, well reasoned, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?
- Innovation: Is the project original and innovative? For example: Does the project challenge existing paradigms or clinical practice; address an innovative hypothesis or critical barrier to progress in the field? Does the project develop or employ novel concepts, approaches, methodologies, tools, or technologies for this area?
- Investigators: Are the investigators appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers? Does the investigative team bring complementary and integrated expertise to the project (if applicable)?
- Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies benefit from unique features of the scientific environment, or subject populations, or employ useful collaborative arrangements? Is there evidence of institutional support?

In reviewing the overall Center, the initial scientific review group will examine evidence of the partners' commitment to the purposes of the NARCH initiative to develop a cadre of AI/AN scientists and health professionals engaged in biomedical, clinical, behavioral and health services research that is competitive for Federal funding; to increase the capacity of both research-intensive institutions and AI/AN organizations to work in partnership to reduce distrust by AI/AN communities and people toward research; and to encourage competitive research linked to the health priorities of the AI/AN partner and to reducing health disparities.

The evidence will include:

- The quality of the partnership of the institutional and community partners, and the quality of the involvement of the Community and Scientific Advisory Council, as demonstrated by documentation of (for instance): The intellectual and tangible contributions and activities of the partners, and of the

Council, in developing the application and the proposed NARCH; the interactions of the partners, and of the members of the Council, in meetings (such as those to develop the application and proposed NARCH); the past activities and future plans to increase the capacity of the partners and of the Council; the plans for future contributions and activities by the partners, and by the Council, in furthering the goals of the proposed NARCH; and the plans for future development of the partnership itself;

• The experience and commitment of the institutional and community partners to recruit, retain, and advance AI/AN faculty/ researcher and students, to support faculty/researcher and student research efforts, and to increase the role of the involved AI/AN communities in the plans of the proposed NARCH;

• The appropriateness of the plan for evaluating the impact of the proposed NARCH, including the quality of baseline data and milestones for accomplishments, and a system to track the future course of program participants; and

• The potential of the proposed NARCH to be a regional and national resource, including: Capacity to provide quality research training and mentoring for integrated promotion and development of AI/AN research careers from undergraduate (or if well justified, high school) through post-doctoral levels; attainment of quality research linked to health priorities of the AI/AN partner and to reducing health disparities; plans for research information dissemination and education activities; and plans for the development of research networks to support the scientific aims of the proposed NARCH. For competitive renewal applications, reviewers will also assess the previous accomplishments and progress of the applicants.

In addition to the above criteria, in accordance with NIH policy, all applications will also be reviewed with respect to the following:

• The adequacy of plans, if research on human subjects is involved, to include both genders and children as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated.

• For applications that are competing renewals of existing NARCH centers, has significant progress been achieved toward each of the originally proposed projects?

• The reasonableness of the proposed budget and duration in relation to the proposed research.

• The adequacy of the proposed protection for humans, animals or the environment, to the extent they may be adversely affected by the project proposed in the application.

• The adequacy of the proposed plan to share data, if appropriate.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the IHS Division of Grants Operations (DGO) and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is a legally binding document. Applicants who are approved but unfunded or disapproved based on their objective review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative and Policy Requirements

A. Grants are administrated in accordance with the following documents:

• This Announcement.

• Administrative Requirements: 45 CFR part 92, (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments, (or 45 CFR part 74, (Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.

• Grants Policy Guidance: HHS Grants Policy Statement, January 2007.

• Cost Principles: OMB Circular A–87, (State, Local, and Indian (Title 2 Part 225).

• Cost Principles: OMB Circular A–122, (Non-profit Organizations (Title 2 Part 230).

• Audit Requirements: OMB Circular A–133, (Audits of States, Local Governments, and Non-profit Organizations).

B. Inclusion of Women and Minorities in Research Involving Human Subjects:

It is the policy of the NIH that women and members of minority groups and their subpopulations must be included in all NIH supported biomedical, clinical, behavioral, and health services research projects involving human subjects, unless a clear and compelling rationale and justification is provided that inclusion is inappropriate with respect to the health of the subjects or the purpose of the research. This policy results from the NIH Revitalization Act of 1993 (Section 492B of Pub. L. 103–43). Because the NARCH initiative targets AI/AN people and communities, a minority population, only the policy of inclusion of women applies to this RFA. The IHS has fully accepted the Office for Human Research Protections (OHRP) policy regarding human subjects. The OHRP Web site is *http://www.hhs.gov/ohrp/*. All investigators proposing research involving human subjects should read the Updated NIH Guidelines for Inclusion of Women and Minorities as Subjects in Clinical Research, published in the NIH Guide for Grants and Contracts on August 2, 2000. (*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-00-048.html*). The complete Guidelines are available at: *http://grants1.nih.gov/grants/funding/women_min/guidelines_amended_10_2001.htm* . The revisions relate to NIH defined Phase III clinical trials and require:

• All applications or proposals and/or protocols to provide a description of plans to conduct analyses, as appropriate, to address differences by sex/gender and/or racial/ethnic groups, including subgroups if applicable; and

• All investigators to report accrual, and to conduct and report analyses, as appropriate, by sex/gender and/or racial/ethnic group differences.

C. Inclusion of Children as Participants in Research Involving Human Subjects

It is the policy of NIH that children (i.e., individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific or ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted. All investigators proposing research involving human subjects should read the NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects that was published in the NIH Guide for Grants and Contracts, March 6, 1998, and is available at the following URL address: *http://grants.nih.gov/grants/guide/notice-files/not98–024.html*. Investigators may obtain copies of these policies from the initiative staff listed under VII. Agency Contacts. Initiative staff may also provide additional

relevant information concerning the policy.

D. URLS in NIH Grant Applications or Appendices

All applications and proposals for NIH funding must be self-contained within specified page limitations. Unless otherwise specified in an NIH solicitation, Internet addresses (URLs) should not be used to provide information necessary to the review because reviewers are under no obligation to view the Internet sites. Reviewers are cautioned that their anonymity may be compromised when they directly access an Internet site.

E. Allowable Administrative Costs

Certain administrative costs for managing a comprehensive program are allowable and may vary, depending upon the size and complexity of the program's activities. The costs budgeted for NARCH grants and subcontracts may not duplicate items already budgeted in other cost centers of the AI/AN, research-intensive, and subcontracted organizations and institutions, such as accounts which make up the Facilities and Administration (F&A) cost pool. The grantee organization receiving the award must be prepared to provide documentation showing the direct relationship of proposed costs to the program, and that costs of this type are charged in a uniform manner to all other grants at all institutions and organizations participating in the award.

Limited salary support for secretarial or clerical help is allowable only when in direct support of the proposed NARCH project. For guidance, applicants should refer to the OMB Circular appropriate for them, A–87 (Cost Principles for State, local, and Indian Tribal Governments), at *http://www.whitehouse.gov/omb/circulars* or A–122 (Cost Principles for Non-Profit Organizations), at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://http://www.whitehouse.gov/omb/circulars*, or should contact the Grants Management Officer listed under VII. Agency Contacts.

Costs for evaluation activities are allowable, as are costs for the Community and Scientific Advisory Council. All research project applications must include costs associated with one annual meeting per year in Rockville, MD, of the project Principal Investigator(s) and their key scientific personnel. Research project applications should also include costs associated with attendance for key personnel and presenters to the annual Native Health Research Conference. NARCH core and/or training budgets should include these travel costs for key NARCH personnel and trainees who are not associated with specific research projects.

Student Development Costs: Student (graduate, undergraduate, and high school if well justified) remuneration through salary/wages for participation in research experiences may be requested, provided all the following conditions are met:

I. The student is performing necessary work involved in the research;

II. There is an employer-employee relationship between the student and the proposed NARCH or its partners;

III. The total compensation is reasonable for the work performed; and

IV. It is the practice of the proposed NARCH or its partners to provide compensation for all students in similar circumstances, regardless of the source of support for the activity.

Graduate students, but not undergraduate students, are allowed tuition costs as part of a compensation package. When requesting support for a graduate student, the NARCH application should provide, in the budget justification section of the application, the basis for the compensation level. The IHS staff will review the requested compensation level and, if it is reasonable and justified, will provide compensation up to a maximum of $45,000 (*http://grants.nih.gov/grants/guide/notice-files/not98-168.html*). Post-doctoral students should be compensated at a rate commensurate with that of other post-doctoral employees with similar degrees and experience at the research-intensive institution. It is the expectation of the IHS and NIGMS that students who are enrolled in a accredited graduate program, as part of a proposed NARCH, will not be excluded from support from other non-Federal or Federal graduate training sources (such as loans and assistance under the Veterans' Adjustment Benefit Act or Pell Grants) for which they are eligible.

Graduate and post-doctoral students cannot concurrently hold other Federally-sponsored stipends or fellowship or any other Federal award that duplicates the NARCH support.

Faculty/Researcher Development Costs

Costs to support faculty/researcher development activities, such as workshops or courses, national meetings, or short-term research experiences in the laboratory of an active NIH-extramurally-funded researcher needed for acquiring specific skills or methodologies needed for prospective research, are allowable. Such costs might include tuition, travel and per diem costs, as well as salary support appropriate to the percent effort needed for the activity.

Research Project Costs

Direct costs associated with research and pilot research projects are allowable when adequate justification is provided. These include faculty/researcher salaries, reimbursed according to percent effort. Summer salary support can be paid provided the institution's academic schedule permits such release and when the institution approves. The maximum summer-salary support provided by the program cannot exceed the equivalent of three months at 100 percent effort, or time specified by the institution as its policy. Grant funds may not be used to increase or supplement faculty/researcher academic year salaries. Salary support for technical assistance and costs for consultants, if justified, are allowable. Costs for equipment to be used to carry out the proposed research are allowable.

Cost for Supplies

Costs for supplies, including costs for animals necessary to carry out the proposed research, may be included. Travel costs for the investigator(s) and staff are permitted to required meetings or when direct benefits to the program are expected, and when adequate justification is provided. Alterations and renovations costs (up to $40,000) are allowable only when essential for conduct of the proposed research. Other permitted costs include animal maintenance (unit care costs and number of care days), donor fees, publication costs, computer charges, rentals and leases, equipment maintenance, and service contracts.

Consortium and Contract Arrangements

Consortium arrangements that may involve personnel costs, supplies, and other allowable costs, including overhead costs; contractual costs for support services, such as the laboratory testing of biological materials, clinical services, data processing, or core administrative services, are allowable expenses. Consortia and contractual costs with Native health organizations, Tribes and/or research institutions in Canada or Mexico are allowable expenses.

Pilot Research Projects

The intent of pilot research projects is to lead to regular research projects funded as part of the center grant or as freestanding grants. For pilot research projects, applications may request

support for up to $75,000 (direct costs) per year for up to four years. Pilot research investigators considering project periods of less than four years are encouraged to consider the fact that initiation of a new research activity in a new population often takes much longer than originally anticipated and that the creation of a trusting relationship between the investigator and the community is both vital and time consuming. NARCH pilot research support is non-renewable. However, NARCH research projects based on prior NARCH pilot research projects are encouraged.

Subcontracts

The grant recipient may issue subcontracts to other organizations (such as the research-intensive institution of the partnership), as long as a minimum of 30 percent of the grant funds are budgeted in the application to remain with the eligible AI/AN organization(s); that is, no more than 70 percent of the application's total budget may be contained in subcontract budgets of the non-eligible subcontracting partner institutions or organizations.

F. Unallowable Costs

Unallowable costs for research projects (including for pilot projects) include costs for student development, textbooks, journals, memberships, and Internet subscription costs, as well as other costs prohibited by OMB Circulars A–87 or A–122 as applicable. Employees of the applicant organization may not serve as paid consultants but may be paid. The pilot research project is intended for faculty/researcher without current Federal research support. Therefore, investigators with significant current support from other mechanisms such as the R01 and research funding from other extramural sources are not eligible, and the costs therefore are not allowable. Release time for preparing proposals or mini-research projects, not submitted as pilot projects, is not allowed.

G. Research Subjects Protection

Under governing policy, Federal funds administered by the HHS shall not be expended for research involving live vertebrate animals without prior approval by the NIH Office of Laboratory Animal Welfare (OLAW), of an assurance to comply with the Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals. This restriction applies to all performance sites (e.g., collaborating institutions, subcontractors, subgrantees) without OLAW-approved assurances, whether domestic or foreign. Funds included in this award may not be used to support studies using live vertebrate animals until approval from the Institutional Animal Care and Use Committee (IACUC) has been received by the IHS Grants Management Officer (GMO).

Federal Regulations (45 CFR, Part 46) require that applications and proposals involving human subjects must be evaluated with reference to the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained. Under governing regulations 45 CFR part 46, found at *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm,* Federal funds administered by HHS shall not be expended for research involving human subjects, and individuals shall not be enrolled in such research, without prior approval by the Office for Human Research Protections (OHRP), of an appropriate Federal Wide Assurance (FWA) and prior approval by an Institutional Review Board (IRB) recognized and listed by the OHRP. Funds included in this award may not be used to support studies using human subjects until evidence of IRB approval has been received by the IHS GMO. Grantees are expected to provide their own institutional FWA.

H. Research Integrity

Grantees shall comply with Public Health Service Policies on Research Misconduct (42 CFR part 93) which require grantees to have procedures for responding to allegations of research misconduct that comply with those policies, to submit their procedures to the Office of Research Integrity (ORI) (*http://ori.hhs.gov*) upon request for review, and revise their procedures in accordance with ORI comments. In addition, grantees shall file the Annual Report on Possible Research Misconduct with ORI at *http://www.ori.dhhs.gov/assurance/electronic_submission.shtml*.

Grantees shall file documentation of their Annual Reports with the IHS GMO.

I. Healthy People 2010

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS led national activity for setting priority areas. This RFA announcement is related to one or more of the priority areas. Potential applicants may obtain a copy of Healthy People 2010 at: *http://www.healthypeople.gov.*

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application, but not to the indirect costs that may be negotiated by the grantees with their subcontractors (which become direct costs to the grantee). In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate documentation is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and/or the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html.* If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final annual progress report, cumulative from the beginning of the project period, must be submitted within 90 days of expiration of each budget period.

B. Financial Status Report. Quarterly financial status reports must be submitted within 30 days of the end of each quarter. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. Reports. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in

suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the Hearing Impaired is Available at: TTY (301) 443–6394.

VII. Agency Contact(s)

1. Questions on the initiative regarding IHS NARCH issues and policies may be directed to: Alan Trachtenberg, M.D., M.P.H., Division of Planning, Evaluation and Research, Indian Health Service, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852, Phone: (301) 443–4700, Fax: (301) 443–0114, e-mail: *narch@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Sylvia Ryan, Division of Grants Operations, Indian Health Service, Reyes Building, 801 Thompson Avenue, TMP Suite 350, Rockville, MD 20852, Phone: (301) 443–5204, Fax: (301) 443–9602, e-mail: *narch@ihs.gov.*

3. Questions on NIH and NIGMS issues and policies, may be directed to: Clifton A. Poodry, Ph.D., Minority Opportunities in Research Division, National Institute of General Medical Sciences, 45 Center Drive, Suite 2AS.37, MSC 6200, Bethesda, MD 20892, Phone: (301) 594–3900, Fax: (301) 480–2753, e-mail: *poodryc@nigms.nih.gov.*

4. Questions on the review of applications may be directed to: Mushtaq A. Khan, D.V.M., Ph.D., Chief, Digestive and Respiratory Sciences IRGs, Center for Scientific Review, MSC 7818, Room 2176; 6701 Rockledge Drive; Bethesda, MD 20892 (20817 for courier or express service) Phone: (301) 435–1778; Fax: (301) 451–2043; e-mail: *khanm@csr.nih.gov.*

VIII. Other Required Documents

If the applicant is a federally-recognized Tribe, Tribal organization, or a Tribal college, letters of support from the Chairman, President, Governor, or Tribal Health Director is required of all Tribes to be served to show their support of the grant project. Letters of support are intended to document that applicants have Tribal support for the specific grant for which they are applying. All letters of support must accompany the grant application.

IX. Other Information

References for Background Information:

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Dated: December 15, 2008.

Robert G. McSwain,

Director, Indian Health Service.

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Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, will no longer appear in the Reader Aids section of the Federal Register. This information can be found online at http://www.regulations.gov.

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 DECEMBER 22, 2008

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Industry and Security Bureau

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Updates to Contact Information for the Treaty Compliance Division; Editorial Corrections; published 12-22-08

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Fisheries in the Western Pacific:

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Pelagic Fisheries; Squid Jig Fisheries; published 11-21-08

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Rules Relating to Reparation Proceedings; published 11-20-08

EDUCATION DEPARTMENT

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Alternative Work Practice to Detect Leaks from Equipment; published 12-22-08

Approval and Promulgation of Air Quality Implementation Plans:

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Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines:

Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision; published 11-20-08

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; published 10-6-08

Revised Exceptional Event Data Flagging Submittal, etc.; Correcting Amendments; published 11-21-08

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JUSTICE DEPARTMENT

Prisons Bureau

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New Domestic Mail Product; published 12-22-08

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Domestic Baggage Liability; published 11-21-08

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Boeing Model 747 100, 747 100B, 747 100B SUD, 747 200B, 747 200C, 747 200F, 747 300, 747 400, 747 400D, 747 400F, and 747SR Series Airplanes; published 11-17-08

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Empresa Brasileira de Aeronautica S. A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes; published 11-17-08

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Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons; published 11-21-08

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AGRICULTURE DEPARTMENT

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Commodity Credit Corporation

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AGRICULTURE DEPARTMENT

Food and Nutrition Service

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Nondiscretionary Provisions of P.L. 108-265, the Child Nutrition and WIC Reauthorization Act (2004); comments due by 1-2-09; published 11-3-08 [FR E8-26099]

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Forest Service

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National Oceanic and Atmospheric Administration

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

Reef Fish Fishery of the Gulf of Mexico; Amendment 30B; comments due by 1-2-09; published 11-18-08 [FR E8-27335]

Reef Fish Fishery of the Gulf of Mexico; Gulf of Mexico Gag Grouper Management Measures; comments due by 1-2-09; published 12-2-08 [FR E8-28616]

Fisheries of the Exclusive Economic Zone Off Alaska:

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Gulf of Alaska; Proposed 2009 and 2010 Harvest Specifications for Groundfish; comments due by 1-2-09; published 12-2-08 [FR E8-28617]

Fisheries Off West Coast States:

Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions; comments due by 12-30-08; published 12-15-08 [FR E8-29680]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Adjustment to Exempted Fishing Permit; comments due by 12-29-08; published 12-12-08 [FR E8-29441]

DEFENSE DEPARTMENT

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2040/P.L. 110–451

Civil Rights Act of 1964 Commemorative Coin Act (Dec. 2, 2008; 122 Stat. 5021)

S. 602/P.L. 110–452

Child Safe Viewing Act of 2007 (Dec. 2, 2008; 122 Stat. 5025)

S. 1193/P.L. 110–453

To direct the Secretary of the Interior to take into trust 2 parcels of Federal land for the benefit of certain Indian Pueblos in the State of New Mexico, and for other purposes. (Dec. 2, 2008; 122 Stat. 5027)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
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900–1899	(869–064–00108–1)	39.00	July 1, 2008
1900–1910 (§§ 1900 to 1910.999)	(869–064–00109–9)	64.00	July 1, 2008
1910 (§§ 1910.1000 to end)	(869–064–00110–2)	46.00	[8]July 1, 2008
1911–1925	(869–064–00111–1)	33.00	July 1, 2008
1926	(869–064–00112–9)	53.00	July 1, 2008
1927–End	(869–064–00113–7)	65.00	July 1, 2008
30 Parts:			
1–199	(869–064–00114–5)	60.00	July 1, 2008
200–699	(869–064–00115–3)	53.00	July 1, 2008
700–End	(869–064–00116–1)	61.00	July 1, 2008
31 Parts:			
0–199	(869–064–00117–0)	44.00	July 1, 2008
200–499	(869–064–00118–8)	49.00	July 1, 2008
500–End	(869–064–00119–6)	65.00	July 1, 2008
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–064–00120–0)	64.00	July 1, 2008
191–399	(869–064–00121–8)	66.00	July 1, 2008
400–629	(869–064–00122–6)	53.00	July 1, 2008
630–699	(869–064–00123–4)	40.00	July 1, 2008
700–799	(869–064–00124–2)	49.00	July 1, 2008
800–End	(869–064–00125–1)	50.00	July 1, 2008
33 Parts:			
1–124	(869–064–00126–9)	60.00	July 1, 2008
125–199	(869–064–00127–7)	61.00	July 1, 2008
200–End	(869–064–00128–5)	60.00	July 1, 2008
34 Parts:			
1–299	(869–064–00129–3)	53.00	July 1, 2008
300–399	(869–064–00130–7)	43.00	July 1, 2008
400–End & 35	(869–064–00131–5)	64.00	July 1, 2008
36 Parts:			
1–199	(869–064–00132–3)	40.00	July 1, 2008
200–299	(869–064–00133–1)	37.00	July 1, 2008
300–End	(869–064–00134–0)	64.00	July 1, 2008
37	(869–064–00135–8)	61.00	July 1, 2008
38 Parts:			
0–17	(869–064–00136–6)	63.00	July 1, 2008
18–End	(869–064–00137–4)	65.00	July 1, 2008
39	(869–064–00138–2)	45.00	July 1, 2008
40 Parts:			
1–49	(869–064–00139–1)	63.00	July 1, 2008
50–51	(869–064–00140–4)	48.00	July 1, 2008
52 (52.01–52.1018)	(869–064–00141–2)	61.00	July 1, 2008
52 (52.1019–End)	(869–064–00142–1)	67.00	July 1, 2008
53–59	(869–064–00143–9)	34.00	July 1, 2008
60 (60.1–End)	(869–064–00144–7)	61.00	July 1, 2008
60 (Apps)	(869–064–00145–5)	60.00	July 1, 2008
61–62	(869–064–00146–3)	48.00	July 1, 2008
63 (63.1–63.599)	(869–064–00147–1)	61.00	July 1, 2008
63 (63.600–63.1199)	(869–064–00148–0)	50.00	[8]July 1, 2008
63 (63.1200–63.1439)	(869–064–00149–8)	53.00	July 1, 2008
63 (63.1440–63.6175)	(869–064–00150–1)	35.00	July 1, 2008
63 (63.6580–63.8830)	(869–064–00151–0)	35.00	July 1, 2008
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
64–71	(869–064–00153–6)	32.00	July 1, 2008
72–80	(869–064–00154–4)	65.00	July 1, 2008
81–84	(869–064–00155–2)	53.00	July 1, 2008
85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–064–00157–9)	53.00	July 1, 2008
87–99	(869–064–00158–7)	63.00	July 1, 2008
100–135	(869–064–00159–5)	48.00	July 1, 2008
136–149	(869–064–00160–9)	64.00	July 1, 2008
150–189	(869–064–00161–7)	53.00	July 1, 2008
190–259	(869–064–00162–5)	42.00	July 1, 2008
260–265	(869–064–00163–3)	53.00	July 1, 2008
266–299	(869–064–00164–1)	53.00	July 1, 2008
300–399	(869–064–00165–0)	45.00	July 1, 2008
400–424	(869–064–00166–8)	59.00	July 1, 2008
425–699	(869–064–00167–6)	61.00	[8]July 1, 2008
700–789	(869–064–00168–4)	64.00	July 1, 2008
790–End	(869–064–00169–2)	64.00	July 1, 2008
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–064–00170–6)	27.00	July 1, 2008
101	(869–064–00171–4)	21.00	[8]July 1, 2008
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–064–00173–1)	27.00	July 1, 2008
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
*1000–end	(869–064–00179–0)	65.00	Oct. 1, 2008
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[10]Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
*1–40	(869–064–00185–4)	49.00	Oct. 1, 2008
*41–69	(869–064–00186–2)	42.00	Oct. 1, 2008
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
*140–155	(869–064–00189–7)	28.00	Oct. 1, 2008
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
*1 (Parts 52–99)	(869–064–00200–1)	52.00	Oct. 1, 2008
*2 (Parts 201–299)	(869–064–00201–0)	53.00	Oct. 1, 2008
*3–6	(869–064–00202–8)	37.00	Oct. 1, 2008
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49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
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*200–299	(869–064–00209–5)	35.00	Oct. 1, 2008
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600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
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50 Parts:			
1–16	(869–064–00215–0)	14.00	Oct. 1, 2008
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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	[9] Oct. 1, 2007
18–199	(869–062–00220–3)	50.00	Oct. 1, 2007
*200–599	(869–064–00221–4)	48.00	Oct. 1, 2008
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660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
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[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 July 1, 2007, through July 1, 2008. The CFR volume issued as of July 1, 2007 should be retained.

[9] 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.

[10] 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.